

①
90-280

Supreme Court, U.S.

FILED

AUG 17 1990

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1990

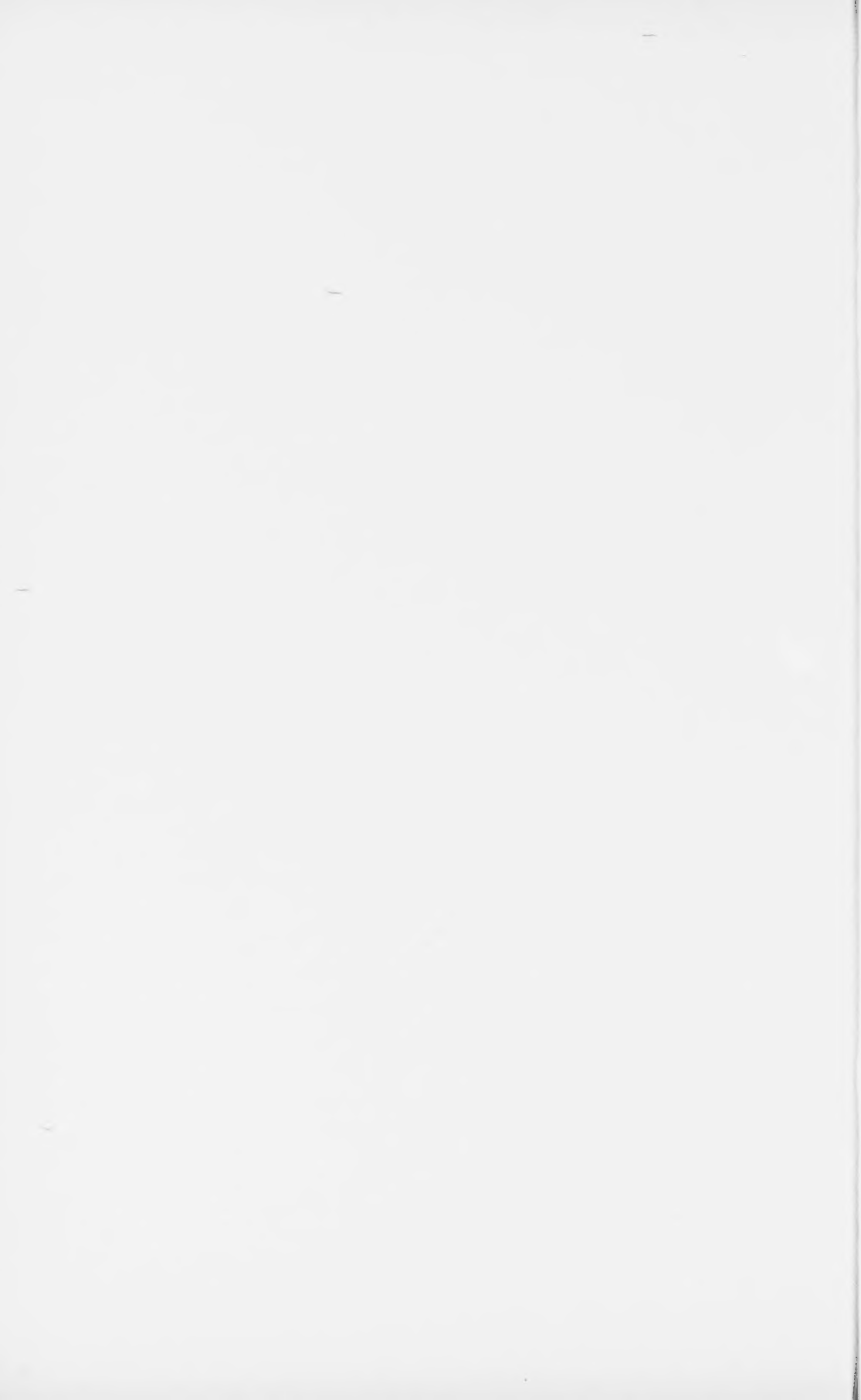
JOAN A. KINNEY, Petitioner

v.

STATE OF CONNECTICUT, Respondent

Petition for Writ of Certiorari
to the
Appellate Court of the State of Connecticut

Roger J. Frechette
12 Trumbull Street
New Haven, CT 06511
Tel. No. (203) 865-2133
August 6, 1990



Question Presented

The issue presented is the identical Article 1, §10 impairment of contract issue decided in Fisk v Jefferson Police Jury 116 US 131 (1885).

In Fisk, an appointed district attorney was awarded a judgment against a governmental entity, based upon past services he performed. Once the services had been rendered, there arose an implied contract to pay for those services. In Kinney an appointed judge's widow was awarded a judgment against the State of Connecticut based upon past services her husband performed, as the workers' compensation court found a contract of employment for past services. These prior services admittedly were the cause of his death. She asserted an implied contract to pay for those services.

There is no difference between Fisk and



Kinney, but there is a distinction in that Fisk was a district attorney, whereas Kinney was a judge; Fisk sued for an award for past due agreed remuneration, and Kinney sued for past due agreed remuneration including an agreed upon death benefit; the Supreme Court of Louisiana held that its constitution prohibited Fisk's recovery, and the Supreme Court of Connecticut held a statute prohibited Kinney's recovery.

The holding in Fisk, Supra at 135, is dispositive, and is the reason a petition for certiorari is filed. "It is well settled that a provision in a State Constitution may be a law impairing the obligation of a contract, as well as one found in an ordinary statute." in Kinney this court is asked to hold that a provision in a state statute is a law impairing the obligation of a contract.

Parties to the proceeding:

Petitioner: Joan A. Kinney of Elmwood
Road, New Haven, CT.

Respondent: State of Connecticut Office
of Attorney General, 55 Elm St.,
Hartford, CT

Table of Contents

LIST OF CITATIONS	4
Reference to Opinions below	5
Jurisdictional Statement	6
Constitutional Provision	7
ARTICLE I	7
Concise Statement of Case	7
Table of Contents of Appendix in Appendix	

LIST OF CITATIONS

Connecticut Cases

Kinney v State 213 Conn. 54 . . . 2, 9, 12

United States and Federal Citations

Fisk v Jefferson Police Jury 116

US 131 (1885) 1, 2, 8, 11, 12, 13

U. S. Const. Art I § 10 7, 8, 14

Writ of Certiorari, 28 US

1257 (3) 8

Statutes, Regulations

§ 32-275(s) C.G.S.13

§ 31-275(6) C.G.S. id. 60 11

1257 (3) 8

Reference to Opinions below:

A. Judgment and Decree of Workers' Compensation Commissioner in favor of Petitioner. Appendix p. 1.

B. Decision of Supreme Court of Connecticut, 213 Conn. 54, ____A2d____.

Appendix p. 25.

C. Decision upon motion for reargument, denied without opinion. Appendix p. 38.

D. Order of Compensation Review Decision, denied without opinion. Appendix p. 39.

E. Decision of Appellate Court of State of Connecticut, affirming order of Compensation Review Commission. Appendix p. 40.

F. Decision of Supreme Court of State of Connecticut, 215 Conn. 807, Petition for Certification for Appeal from the Appellate Court, denied without opinion. Appendix p.41.

Jurisdictional Statement

Grounds: The Lower Court held Petitioner's decedent Frank J. Kinney, an appointed Superior Court judge, died as a result of work-induced stress, which resulted in an implied contract to pay for

those fully rendered services. The Connecticut Supreme Court ruled that a statute prohibited Kinney from receiving that past due remuneration. That ruling constitutes a violation of Article 1 Section 10 of the United States Constitution, as it is an impairment of contract.

i. Date of Judgment or decree sought to be reviewed; Decision of Supreme Court; November 28, 1989.

ii. Decision of Supreme Court of State of Connecticut denying a petition for certification: May 29, 1990

iii. Statutory provision believed to confer jurisdiction in this court to review the judgment or decree by Writ of Certiorari, 28 USC §1257(3)

F. Constitutional Provision.

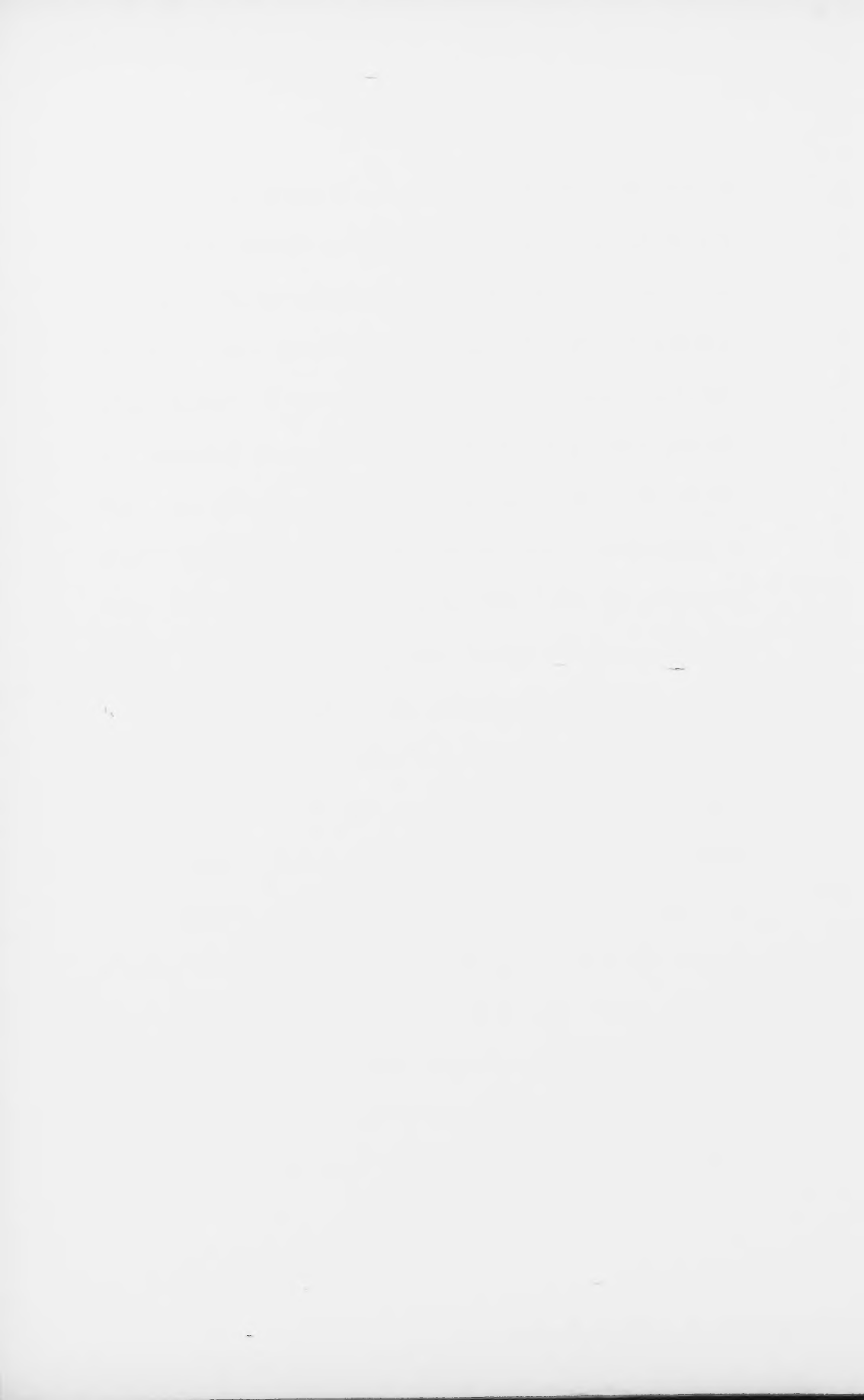
Constitution of the United States. U. S. Const. Art. I. §10.

ARTICLE I

§ 10 Restrictions upon powers of states
Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

G. Concise Statement of Case.

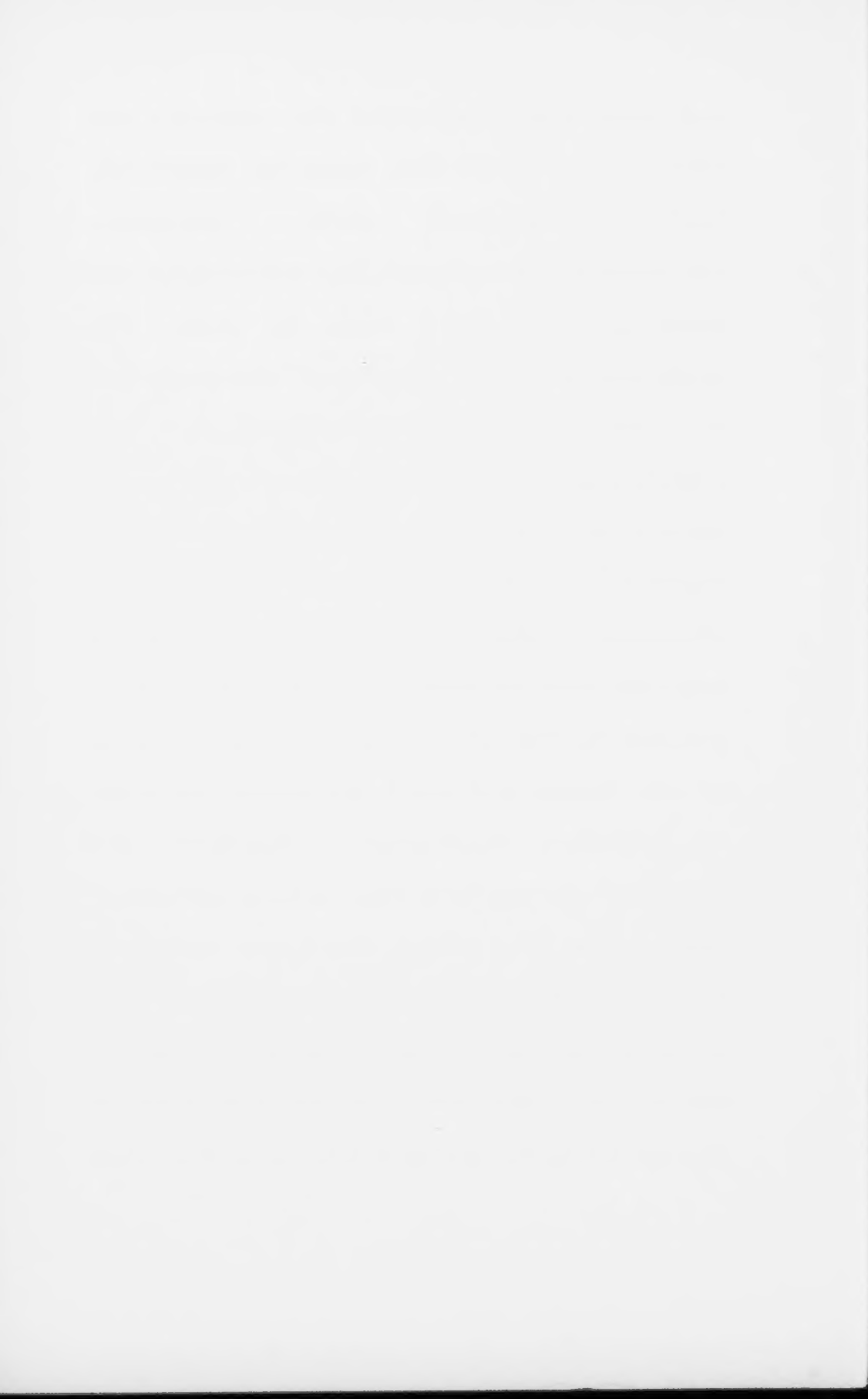
Kinney a superior court judge for 16 years died as a result of his "excessive administrative workload [which] resulted in chronic stress." Kinney v. State 213 Conn. 54, 57. Appendix p. 28. It was also found that the myocardial infarction that resulted in his death was precipitated in part by the chronic stress associated with his prodigious judicial duties, and that



"no single judge since then does all three jobs anywhere in the State." Id. The State declined to challenge causality either below or on appeal. Id. 57. Appendix p. 28.

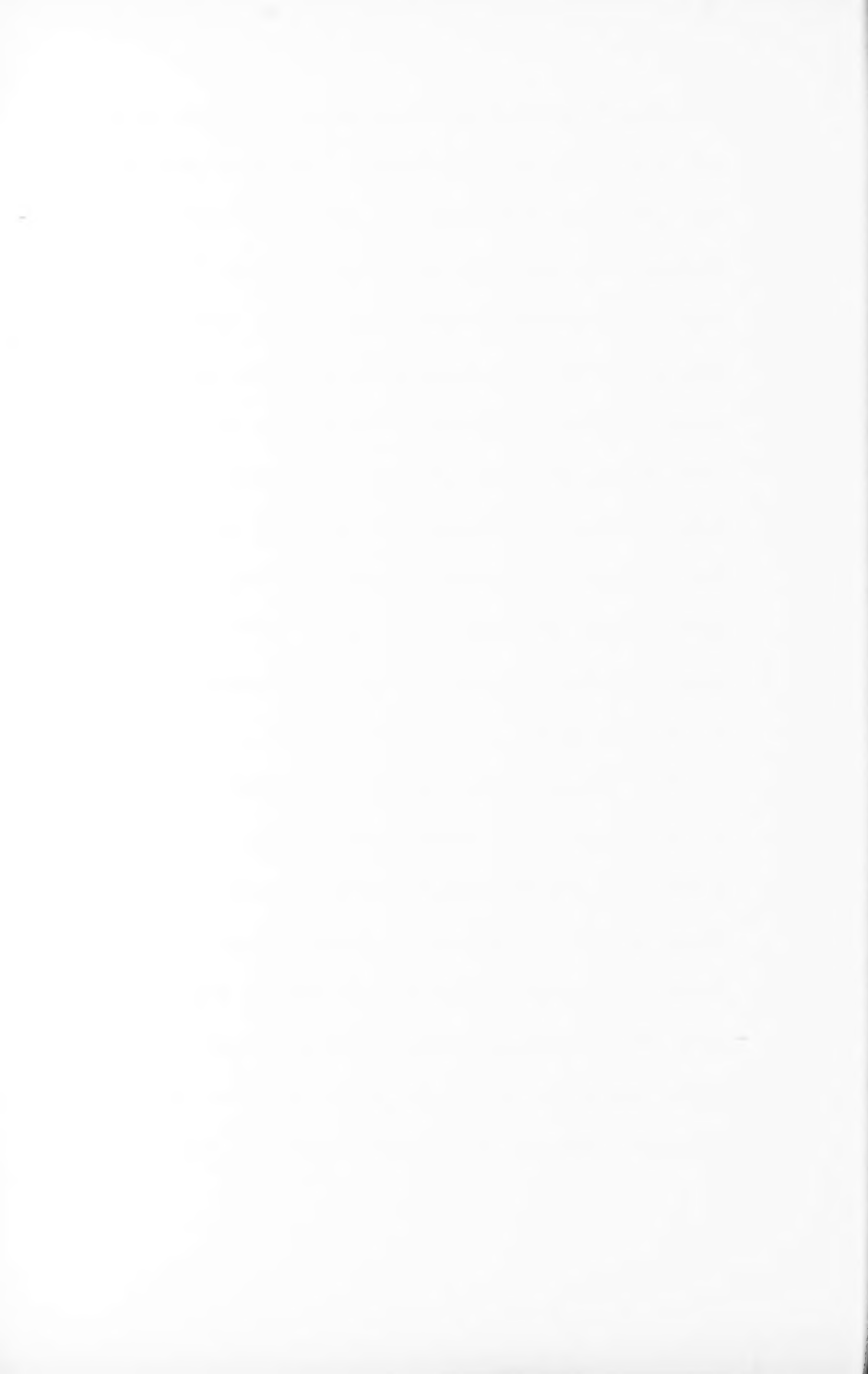
The lower Court, Workers' Compensation Commissioner Loeb, found as a fact that decedent's work and performance was subject to the approval of the Chief Court Administrator, which control involves close supervision of the case handled by judges in terms of disposition of cases, both with respect to the volume of cases handled and in the time within which they were disposed. Records were kept as to the performance of each judge in order to determine if his performance met the goals established by the administrators. The State of Connecticut paid the decedent, as an employee of the State, it withheld his federal income tax, certain compensation

and additional benefits for medical and dental care, provided vacation benefits, certain personal days, -holidays, retirement, and disability, controlled the specific hours and days of work, the geographical location where the work was to be performed, controlled and supervised, and regulated the ministerial duties of the decedent. The State also controlled the administrative duties of presiding judge criminal division which required the decedent to supervise closely the day-to-day activities and performance of all judges and court personnel assigned to judicial districts. Decedent was assigned to perform the duties of chief administrative judge for the criminal division, which required him to supervise closely the work of all judges throughout the state. The decedent was assigned to handle criminal matters and also the work



of court personnel engaged in that phase of judicial proceedings. He was assigned to perform the duties of administrative judge for the New Haven Judicial District which involved supervision and control of the work of all judges and court personnel within that judicial district, as well as the work of the court. He was assigned the duties of chairman of the commission to study alternate sentencing, all of which assignments were in addition to his regular duties as presiding judge on the criminal side.

The decedent's work day commenced at 7:00 a.m. and continued well into the evening five days per week. The decedent's immediate supervisor, Chief Court Administrator Aaron Ment, testified and the Commissioner found that, "Five hats were a lot of work to do and no single judge since then does all of these



jobs anywhere in the State." Kinney, Supra. at 57 n. 5 Appendix p. 28.

The lower Court found, and the Supreme Court of Connecticut so held that the State of Connecticut was, and is, an employer within §31-275(6) C.G.S. id 60, n. 10 Appendix p. 31.

The Commissioner found, as a fact, that a relationship existed between the employer, the State of Connecticut, and the decedent, Kinney, which was an "Employment relationship." Kinney Supra. at 56 Appendix p. 27 That fact was affirmed by the Supreme Court. Id.

Kinney preserved the federal claim when she filed before the Compensation Review Division, stating that to deny benefits to her for past services performed interfered with her contract rights as articulated in Fisk v. Jefferson Police Jury, supra. That claim was briefed and argued in

Kinney's appeal to the Connecticut Appellate Court. The judgment of that Court, without opinion, Appendix p.40, 41, does not address that issue. Further, after filing her petition for certification to the Connecticut Supreme Court in which the Fisk "impairment of contract" issue was again raised, the Connecticut Supreme Court rejected it without opinion, Appendix p. 41, in the Connecticut Law Journal of May 29, 1990.

Kinney's argument is that the lower Court's judgment, that Judge Kinney was an "employee", was based upon past services which he fully performed, and, that as such, was entitled to remuneration for those [past due] fully performed services. For the Connecticut Supreme Court to reverse that judgment on the grounds that a statute, § 31-275(s) C.G.S., prevents the payment of past due services to one in



an employment relationship with the State,
is as great a violation of U. S. Const.
Art. I, § 9 as was the Louisiana Supreme
Court holding that its constitution
prevented payment for past due services as
articulated in Fisk, supra.

The contract rights of Kinney must,
respectfully, be restored to her.

Respectfully submitted

Roger J. Frechette

Roger J. Frechette

Adm. to Supreme Court 10/12/71

12 Trumbull St.

New Haven, CT 06511

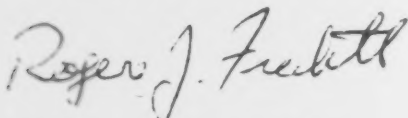
Tel. No. (203) 865-2133



Certification of Service

I, Roger J. Frechette Frechette, do hereby certify that three copies of the foregoing Petition for Certiorari together with the Appendix thereto was duly deposited in the United States Mail, at the U. S. Post Office, New Haven, Connecticut, postage prepaid on August 6, 1991 addressed to:

Brewster Blackall, Esq.
55 Elm Street
Hartford, CT 06106
Tel. No. (203)566-3110

A handwritten signature in cursive script that reads "Roger J. Frechette". The signature is written in dark ink and is positioned above the printed name and title.

Roger J. Frechette
Attorney



Docket No.

IN THE UNITED STATE SUPREME COURT

OCTOBER TERM, 1990

JOAN A. KINNEY, Petitioner

v

STATE OF CONNECTICUT

Petition for Writ of Certiorari
to the
Appellate Court of the State of Connecticut

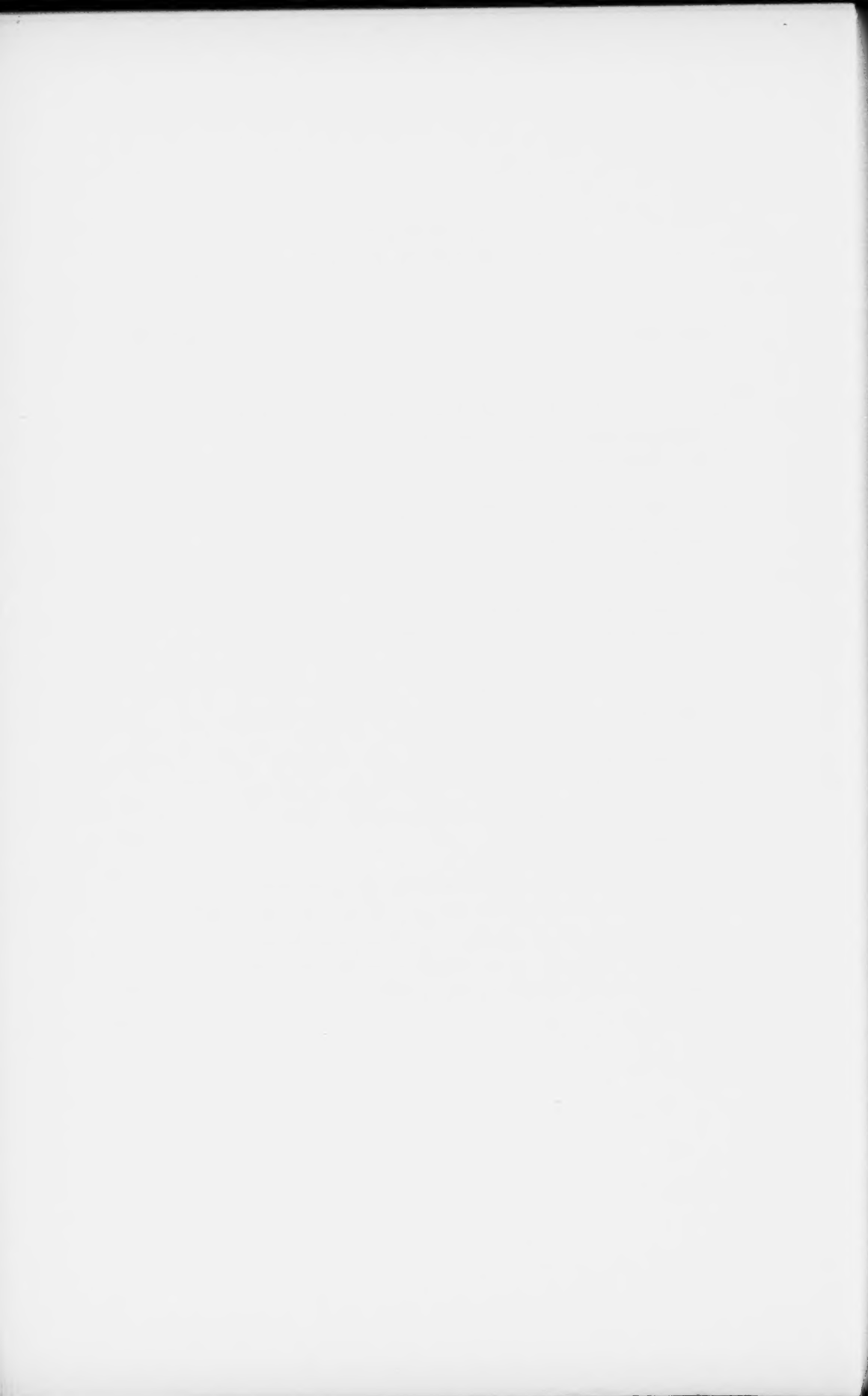
APPENDIX TO
Petition for Writ of Certiorari

Roger J. Frechette
12 Trumbull St.
New Haven, CT 06511
Tel.(203)865-2133



APPENDIX
TABLE OF CONTENTS

Item No.	Page No.
A. Judgement and Decree of Workers' Compensation Commissioner in favor of Petitioner.	1
B. Decision of Supreme Court of Connecticut, 213 Conn. 54, ___A2d___.	25a
C. Decision upon motion for reargument, denied without opinion.	38
D. Order of Compensation Review Decision, denied without opinion.	39
E. Decision of Appellate Court of State of Connecticut, affirming order of Compensation Review Commission.	40
F. Decision of Supreme Court of State of Connecticut, 215 Conn. 807, Petition for Certification for Appeal from the Appellate Court, denied without opinion.	41



A

WORKERS' COMPENSATION COMMISSION

STATE OF CONNECTICUT

THIRD DISTRICT

Joan A. Kinney, Widow and Dependent of
Frank J. Kinney v Workers' Compensation
Commission

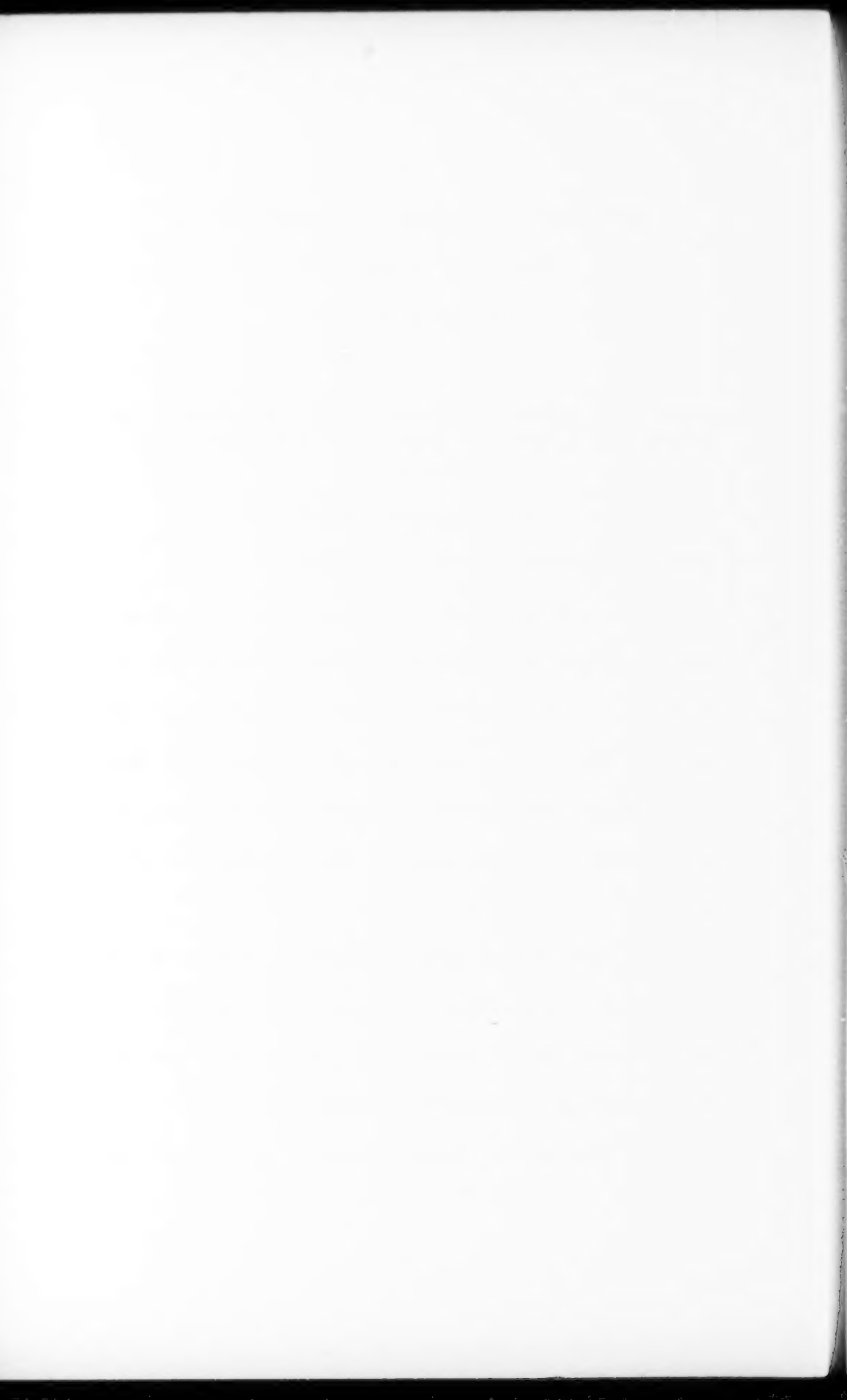
FINDING AND AWARD

THE FOLLOWING FACTS ARE FOUND;

1. Claimant, Joan A. Kinney, hereinafter the Claimant, married Frank J. Kinney, hereinafter the Decedent, on August 28, 1954, resided with him, and was regularly receiving support from him at the time of his death on September 26, 1986.

2. Claimant and Decedent have five children from their marriage, three of whom were over eighteen years of age at the time of Decedent's death.

3. Claimant John Kinney, a child of

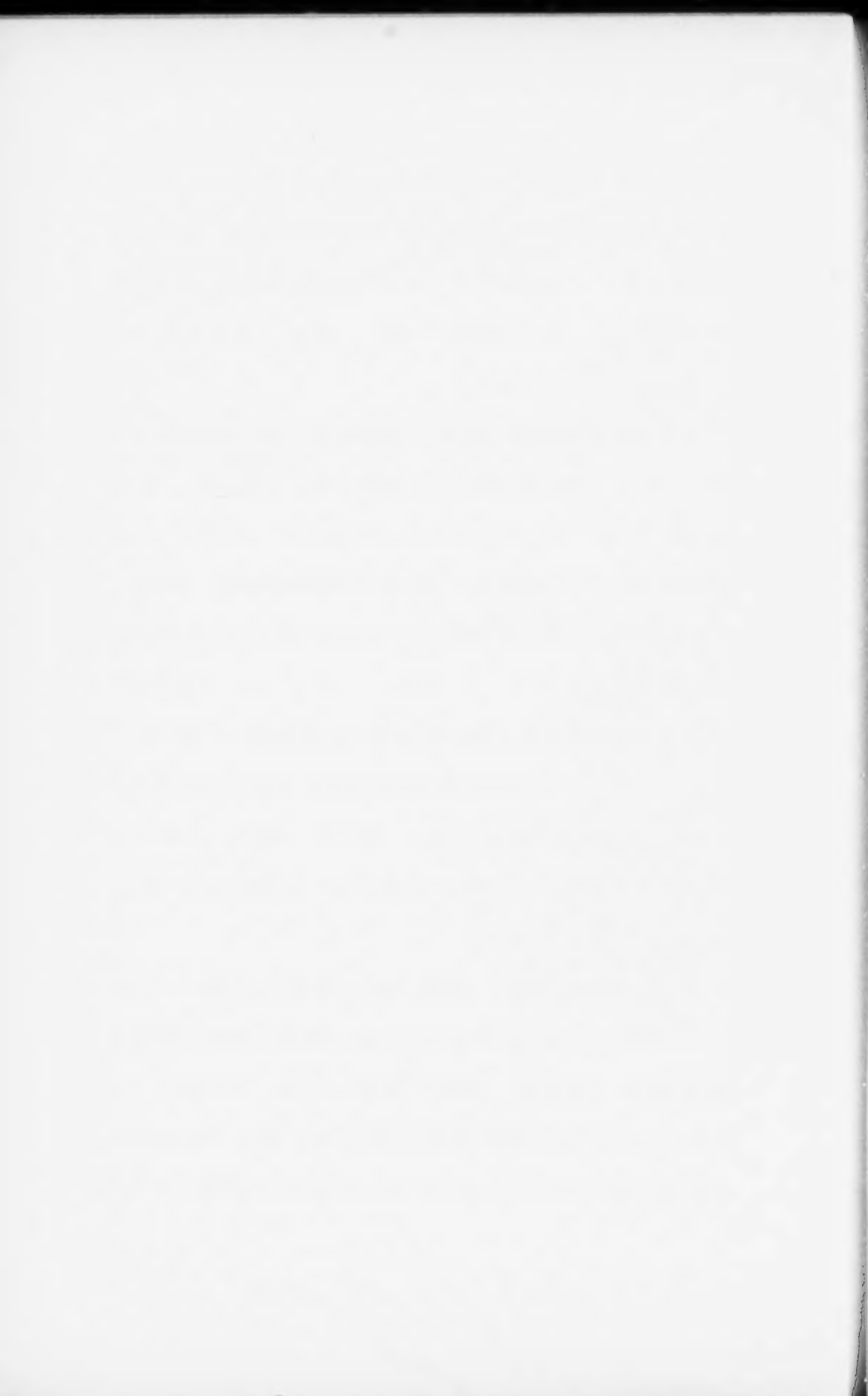


Decedent and Claimant Joan A. Kinney, was born August 28, 1966, resided with and received support from Decedent while attending college at the time of Decedent's death.

4. Claimant Nancy Kinney, a child of Decedent and Claimant Joan A. Kinney, was born May 27, 1969, resided with and received support from Decedent while attending school at the time of Decedent's death.

5. Decedent was first appointed to his position by the Governor and confirmed by the Legislature in 1972 and served continuously as an active judge to the date of his death.

6. Decedent, who was born June 18, 1932, collapsed September 28, 1986, while on his front lawn and was taken by ambulance to the Hospital of St. Raphael and died at 6:40 p.m. at the hospital.

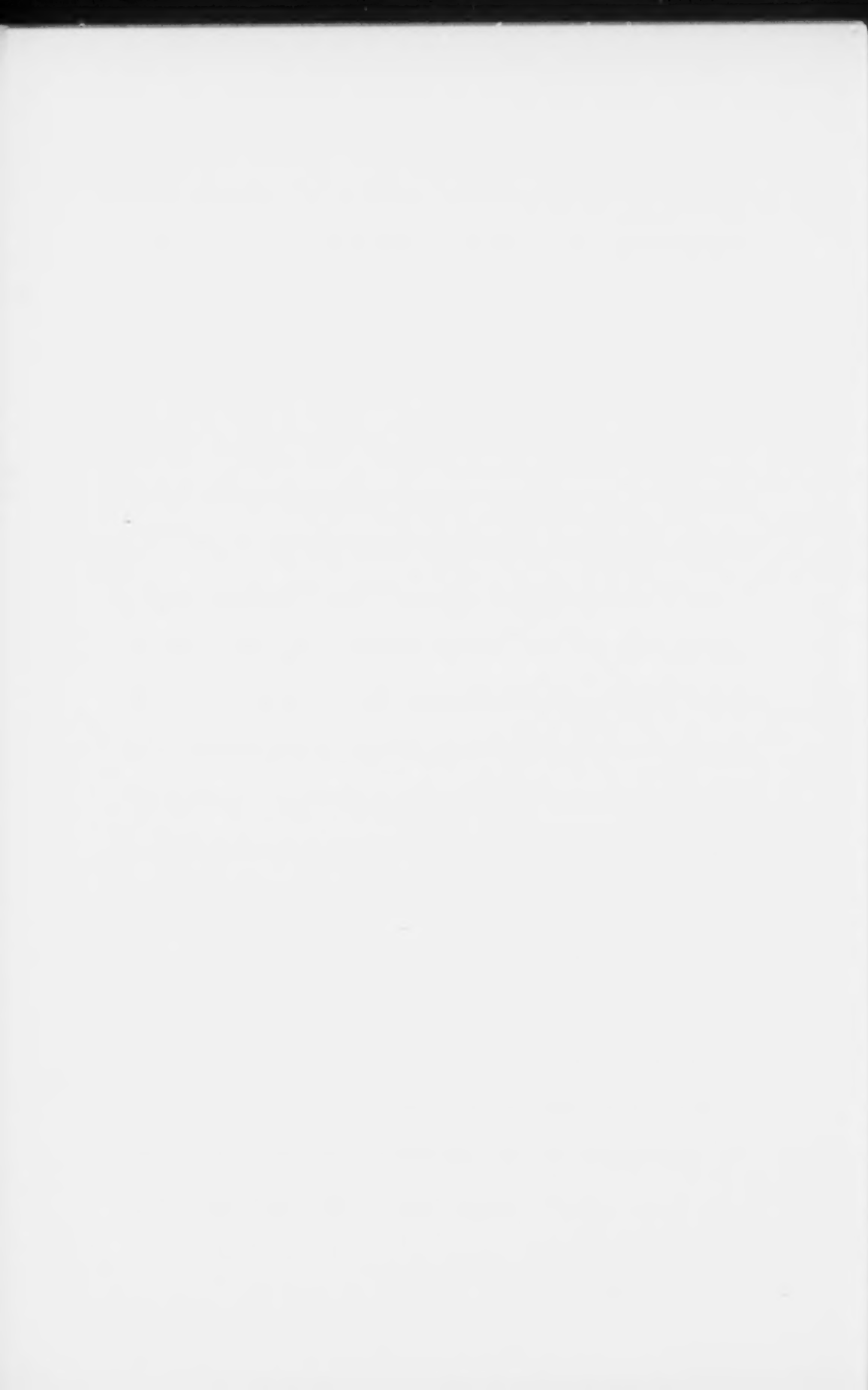


7. The immediate cause of death was diagnosed at the hospital as cardio respiratory arrest due to ventricular fibrillation and myocardial infarction.

8. Notice of this claim for compensation was placed on file with personal service in the office of this Commission on December 16, 1986.

9. Respondent State of Connecticut, hereinafter the Respondent, by certified mail received December 26, 1986, in the office of this Commission contested its liability to pay compensation stating, "Respondents contend claimant's death due to Cardio Respiratory Arrest, Ventricular Fibrillation and Myocardial Infarction are not casually related to his work and may be pre-existing in nature." (sic)

10. Claimants allege that Decedent was an employee of Respondent and was subject to the provisions of the Connecticut



Workers' Compensation Act, Chapter 568 of the Connecticut General Statutes.

11. Claimants claim all compensation benefits for herself, the surviving spouse, and two dependent children, hospital and medical expenses, statutory burial allowance, interest and attorney's fees.

12. Claimants allege that Decedent's death arose out of and in the course of his employment as a Judge of the Superior Court.

13. Respondent contends that Decedent, as a Superior Court Judge, was an appointed official of the State, not an employee and, therefore, not subject to the Workers' Compensation Act.

14. Respondent further contends that salaries and benefits for judges are granted by the Legislature pursuant to Connecticut General Statutes, Chapter 16,



Section 2-9a and Chapter 872 and no workers' compensation benefits are provided by Chapter 568 for judges so, therefore, the Workers' Compensation Commission has no jurisdiction over this claim.

15. Respondent filed a Motion to Dismiss dated December 11, 1987, and after the State Supreme Court rendered its decision in Castor v. Viera, 207 Conn. 420, on May 10, 1988, Respondent renewed its Motion to Dismiss by brief submitted June 21, 1988.

16. Respondent's said Motion to Dismiss was considered and denied by the undersigned August 15, 1988.

17. The initial issue to be decided herein is jurisdiction, that is, whether Decedent was an employee of the state within the meaning of the Workers' Compensation Act, Chapter 568, Connecticut



General Statutes and in particular Section 31-275(5) of said Act.

18. The duties and responsibilities of a Superior Court Judge are set forth in Connecticut General Statutes.

19. The work and performance of a Superior Court Judge is subject administratively to the Chief Administrative Judge for the Superior Court, as well as to the Chief Judge for each division within a judicial district.

20. Administrative control involves close supervision of the case handling by judges in terms of disposition of cases, both with respect to the volume of cases handled and the time within which they are disposed.

21. Records were kept of the performance of each judge in order to determine if his performance met the goals established by the administrators.



22. Respondent paid Decedent as an employee of the state certain compensation and additional benefits for medical and dental care.

23. Respondent provided vacation benefits and specific certain personal days and holidays Decedent was free from work.

24. Respondent agreed to provide retirement benefits and disability benefits if Decedent became eligible for either benefits.

25. Respondent set and controlled specific hours and days Decedent had to work as well as set and controlled the geographical location where, as an employee, he was required to work.

26. Respondent at all times controlled, supervised and regulated the ministerial duties of Decedent.

27. Decedent, in addition to performing



the duties of a Superior Court judge, principally in the Judicial District of New Haven, was assigned additional duties beginning in 1980.

28. From the beginning of his employment as a judge in 1972 he was observed to enjoy and be happy in his judicial duties and work.

29. Prior to 1980 there was no problem of stress, either mental or physical, detected by any of Decedent's family, friends, legal and judicial associates.

30. In 1980, Decedent was assigned to perform the duties of the Presiding Judge Criminal Division which required him to supervise closely the day-to-day activities and performance of all judges and court personnel assigned to the New Haven Judicial District.

31. In 1983, he was assigned to perform the duties of Chief Administrative Judge



of the Criminal Division which required him to supervise closely the work of all judges throughout the state assigned to handle criminal matters and also the work of court personnel engaged in that phase of judicial proceedings.

32. In 1985, he was assigned to perform the duties of Administrative Judge for the New Haven Judicial District which involved the supervision and control of the work of all judges within that judicial district, as well as the work of court personnel.

33. In 1986, he was additionally assigned to perform the duties of Chairman of a Commission to Study Alternate Sentences which was created for development of a model program for sentencing. His responsibilities involved supervision of the committee and preparation of the committee report.

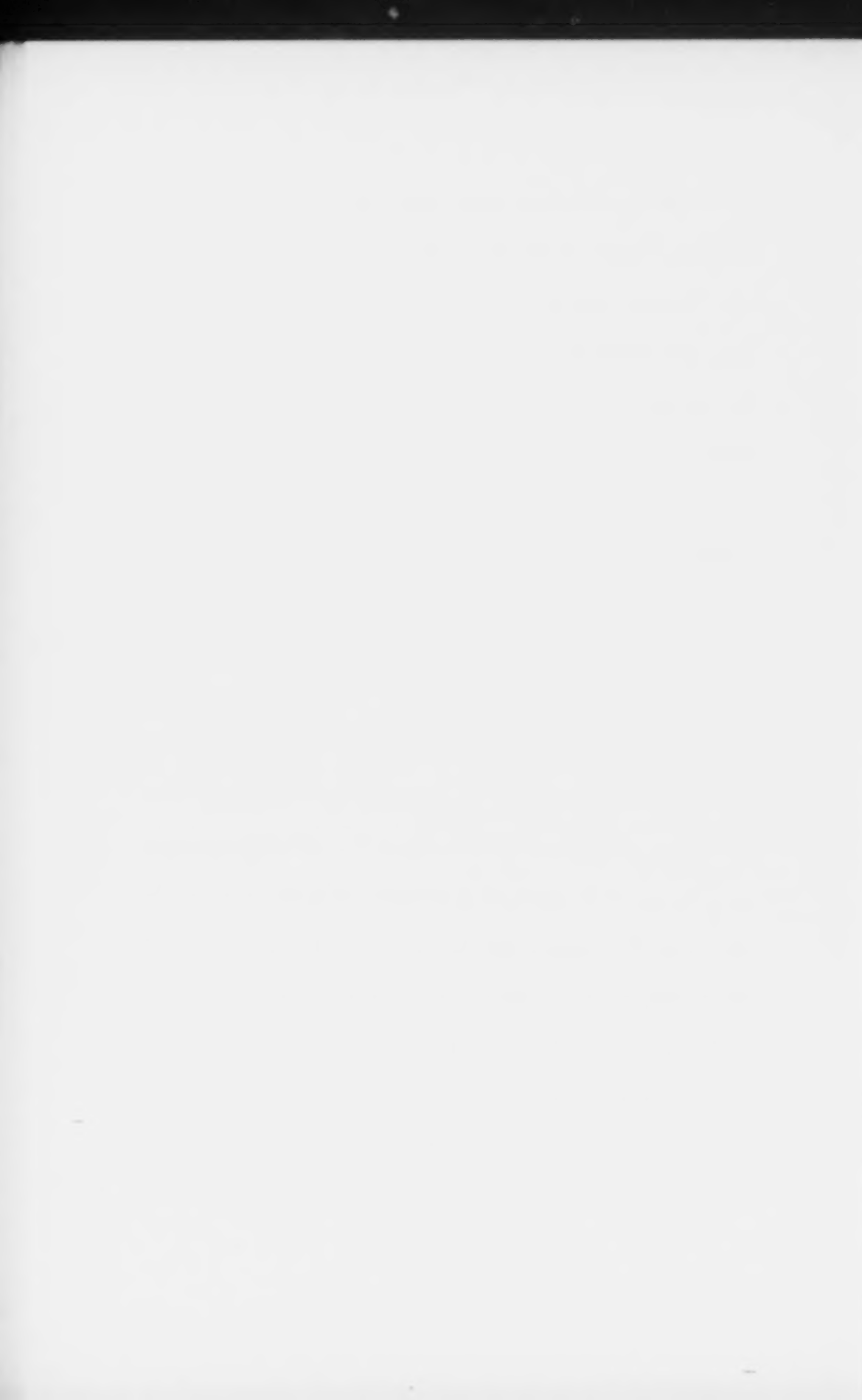
34. All these assignments with the



attendant duties and responsibilities were placed upon him by the administrators of the State Judicial Department and required him to perform them regularly in addition to presiding as a judge on the criminal side.

35. Decedent's work day during the week commenced at 7:00 a.m. While he breakfasted, he received telephone calls from court personnel and reviewed necessary files for the day. His work continued with his arrival at the courthouse at 8:40 a.m. for discussion with judges, clerks, prosecutors, presiding at pretrials and trials and work at court concluding at 6:00 p.m. He continued his work at 7:30 p.m. in his office in his home after dinner and continued until 12:30 a.m. on Monday, Tuesday, Wednesday and Thursday nights.

36. He also performed these work duties



at his office in his home on Sunday nights.

37. No other judge in the judicial system was assigned or ever had been assigned to serve in so many positions additional to his usual court duties as a Superior Court Judge.

38. An onerous physical and mental workload was placed upon Decedent commencing in 1980.

39. Decedent was subjected to intensive pressure by his superiors to have cases resolved, which required his maintaining close and constant supervision of judges, attorneys and clerical employees.

40. Throughout his work beginning in 1980, Decedent was responsible for the management of cases in the courts to which he was assigned with the aim of moving cases as speedily as possible while assuring fair treatment and to reduce the



time lag between indictment or institution of the case and disposition.

41. Decedent was instructed by his superiors in the judicial system to break the "log jam". This required overseeing and strictly enforcing applicable procedures through Decedent's direct personal actions directed toward judges, attorneys and clerical employees.

42. Decedent's work at home in the evening principally dealt with cases taken home for his review of issues in an endeavor to speed the judicial process and overcome the lag in the disposition of cases. Such work required extraordinary mental efforts by Decedent.

43. After the death of Decedent, Judicial Department Administrators determined that no one person would again perform, as he did, the two functions of Presiding Criminal Judge and



Administrative Judge for the Judicial District, which covered for New Haven the three geographical districts in New Haven, all civil cases in New Haven, the Family Court in New Haven, the Juvenile Court in New Haven and all personnel staff therein.

44. Decedent's immediate supervisor in the Judicial Department was the Chief Court Administrator for the State Judicial system and he testified, and it is so found, that Decedent performed so many duties for the Judicial Department that it would take several judges to replace him, that it had been too much of a burden for one individual, that "five hats were a lot of work to do" and that no single judge since then does all these jobs anywhere in the state.

45. Judicial and administrative duties placed upon Decedent by the Judicial Department were more onerous than those

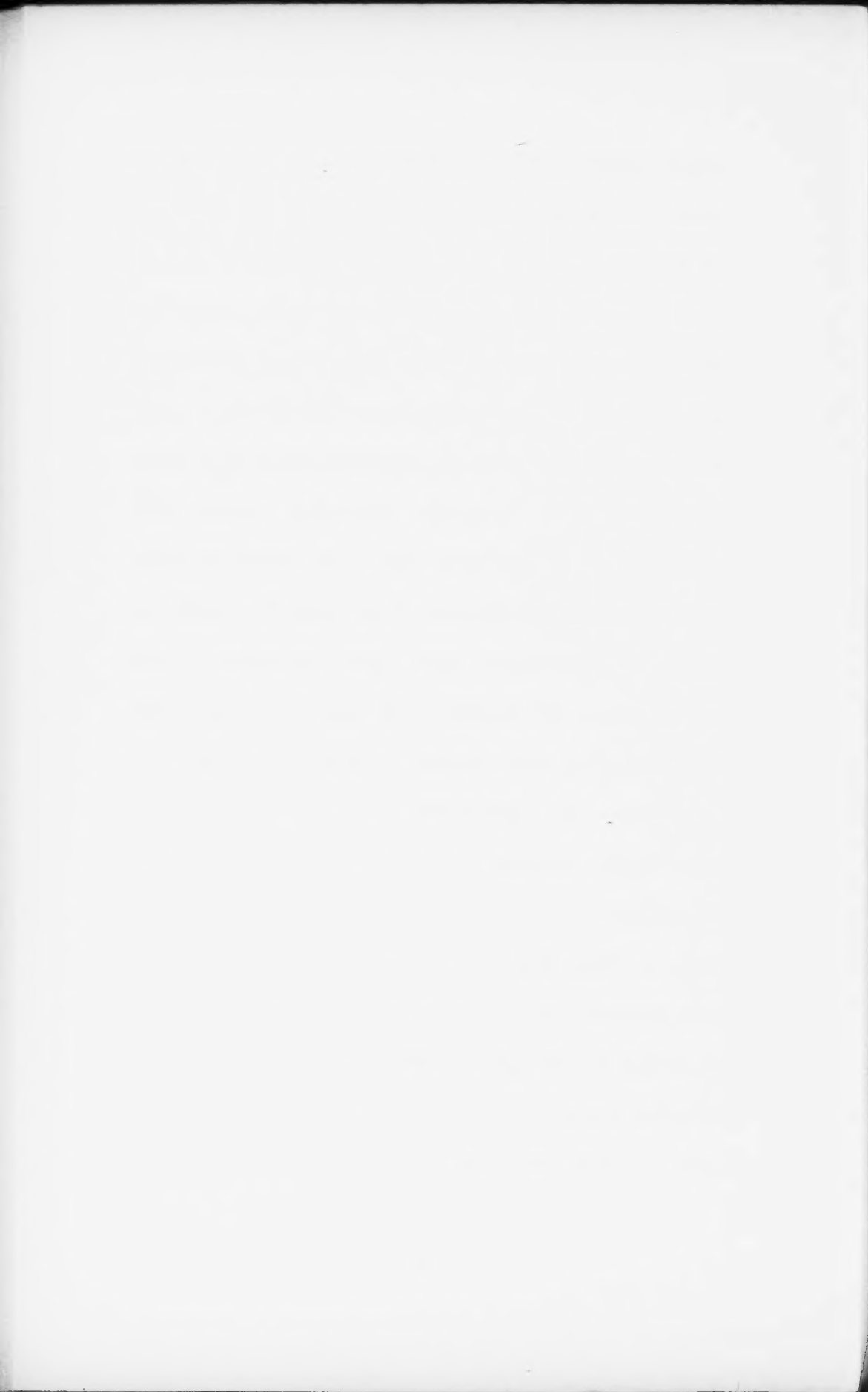


placed upon other judges in the New Haven District or any other jurisdiction within the state.

46. Associate judges and lawyers beginning in Spring, 1986, warned Decedent that the increased judicial and administrative duties placed upon him were affecting his health because they had observed the pallor of his complexion, that he was constantly "up tight", that he spoke of nothing but the movement and disposition of cases and judicial matters and that he was under pressure from his superiors to perform for the Judicial Department those duties they had placed upon him.

47. The duties assigned to Decedent were excessive in demands of time and were not able to be performed within reasonable working hours from 9:00 a.m. to 6:00 p.m.

48. The duties assigned to Decedent



were further excessive in that they required unreasonable mental and physical exertion for prolong periods of time.

49. Demand for management of the court case flow of business were pressed upon Decedent who felt he personally had to give most of his working hours to perform in an attempt to move said caseload and, after his full day at court, worked long hours into the evening to perform duties assigned to him.

50. Dr. Lawrence Cohen and Dr. Phillip Fazzone, both eminent cardiologists, gave their medical opinion after they had reviewed available medical and other records submitted to them about Decedent's prior health, employment and manner of death.

51. There was no conflicting medical testimony in the opinion of both doctors that Decedent's death arose out of and in



the course of his employment.

52. Chronic stress causes a chronic elevation of blood pressure and elevation of blood pressure is one of the risk factors leading to heart injury.

53. Chronic stress causes an increase in the rapidity with which the heart beats.

54. When the heart is caused to be driven at faster than normal rates, caused by the chronic stress, the body adapts by giving off adrenaline.

55. The giving off of adrenaline causes the blood pressure to go up and the arteries to constrict.

56. The adrenaline further causes platelets, a component of the blood, to become sticky thereby creating obstructions or clots to form in the arteries leading to the development of coronary artery narrowing due to



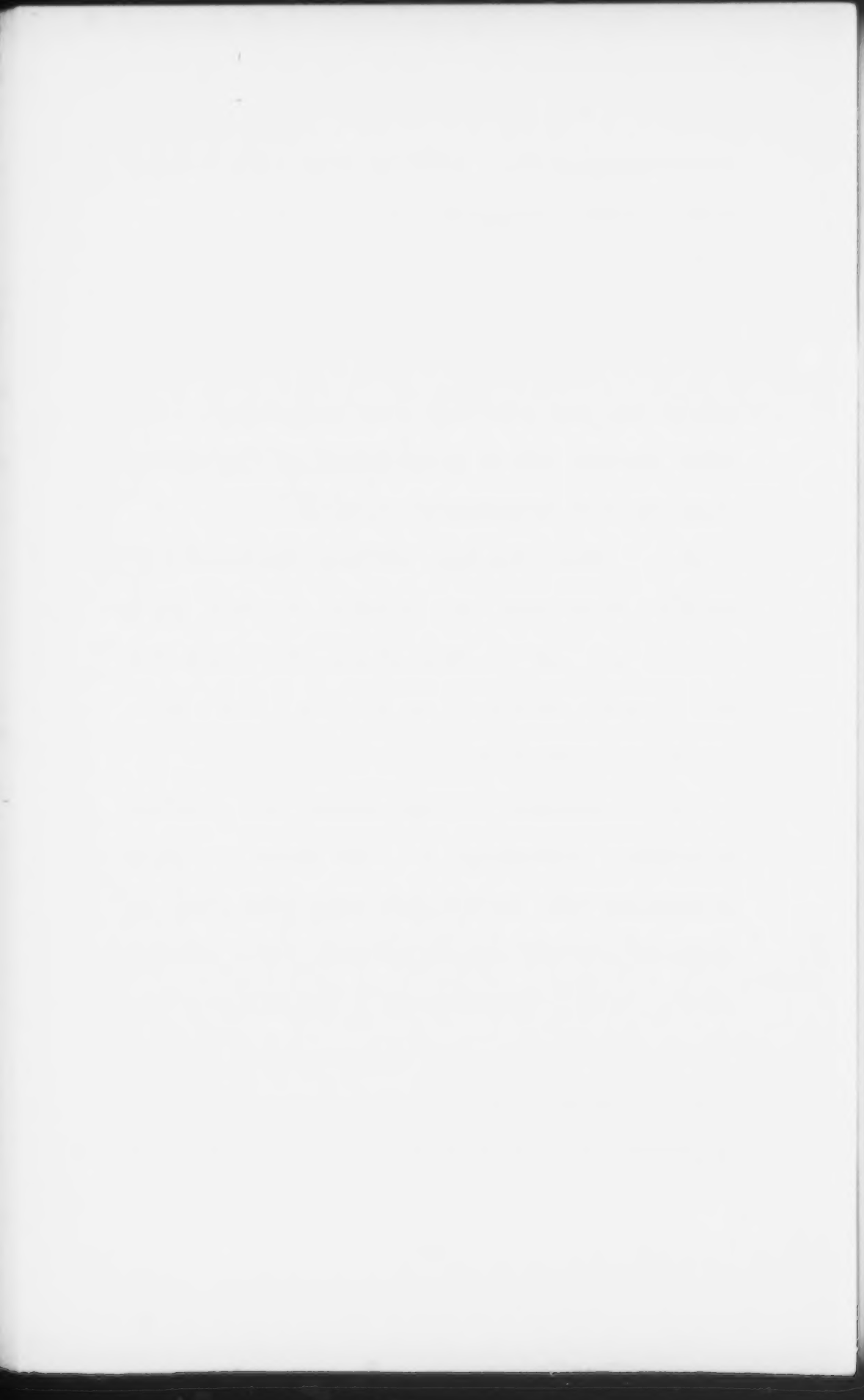
atherosclerosis. This is the last common event that happens prior to a heart attack.

57. Decedent developed stress as a result of the increased pressure under which he was working for Respondent, and such stress was a precipitating factor in causing his myocardial infarct.

58. Such stress caused Decedent to suffer from coronary artery disease as a result of the accumulation of platelets and such stress aggravated his pre-existing condition.

59. Decedent's employment had become extremely stressful in the several years preceding his death and this resulted in chronic stress for him and this stress from his employment produced the myocardial infarct which caused his death.

60. Respondent was the employer of Decedent within the meaning of the term



"employer" as defined by Section 31-275(6) of the Workers' Compensation Act.

61. Decedent at the time of his death was an employee of Respondent.

62. There was a contract of employment between Decedent and Respondent under which Decedent agreed to perform his duties as a judge and Respondent agreed to compensate him for such work, which contract of employment was renewed every eight years from 1972 to the date of his death.

63. Section 31-275(5) provides that employees of the State are subject to workers' compensation and it makes no exception for judicial employees who are appointed to serve as judges.

64. After examination and consideration of the statutes and law submitted by the parties, it is found that an employer-employee relationship existed between

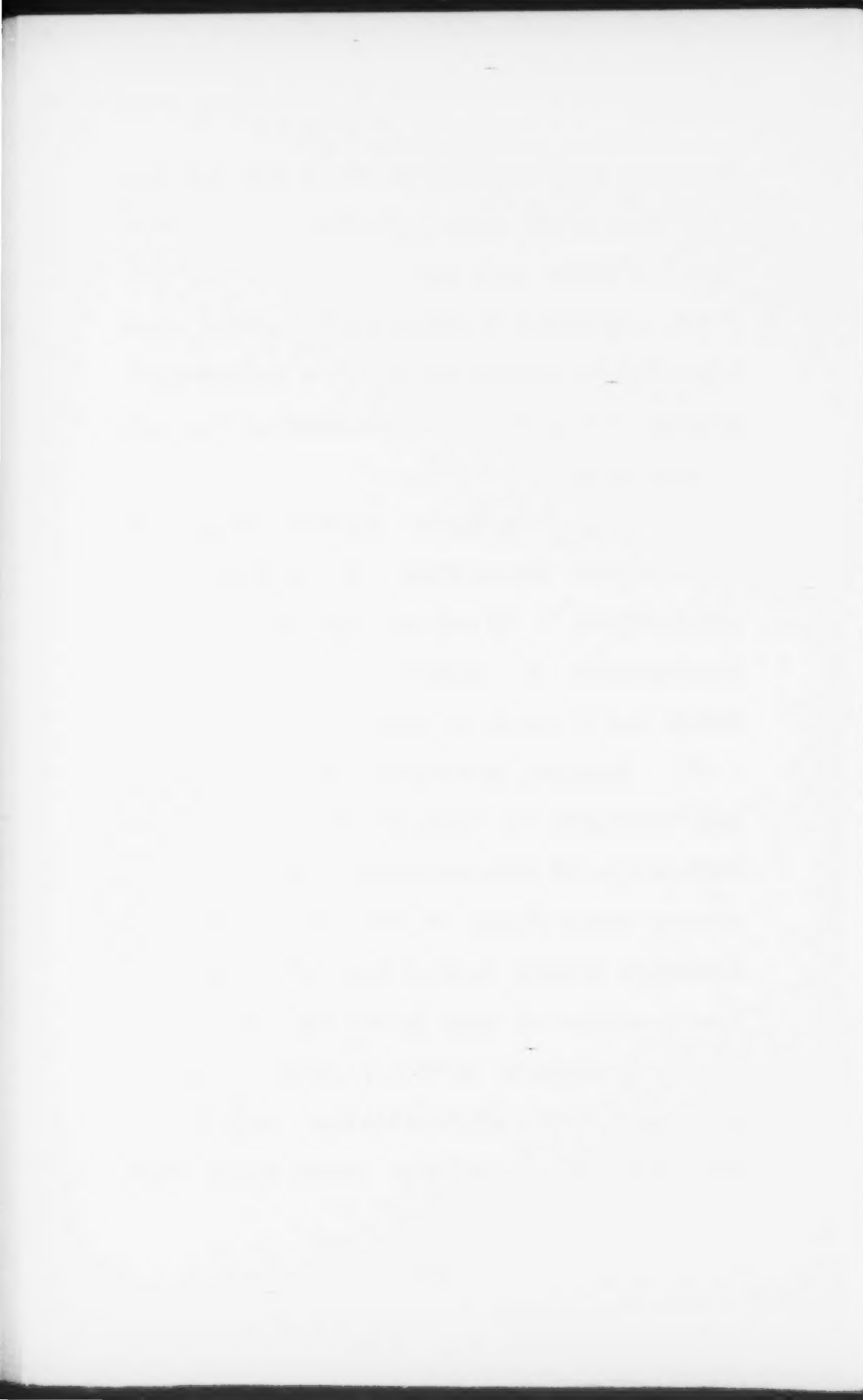


Decedent and Respondent under the Act and the Commission has jurisdiction over the parties under said Act.

65. Decedent's employment imposed upon him chronic stress which was a substantial factor in his death due to cardiac failure on September 28, 1986.

66. The chronic stress from his employment aggravated a pre-existing myocardial atherosclerosis which constituted a cardio-vascular disease which was a cause of death.

67. Unusual pressures on Decedent and his attempts to resolve those pressures caused him to develop chronic stress, such stress contributed to the development of coronary artery diseases initially and the continuation of such pressures aggravated his pre-existing coronary artery disease and was the precipitating factor in causing his myocardial infarction that



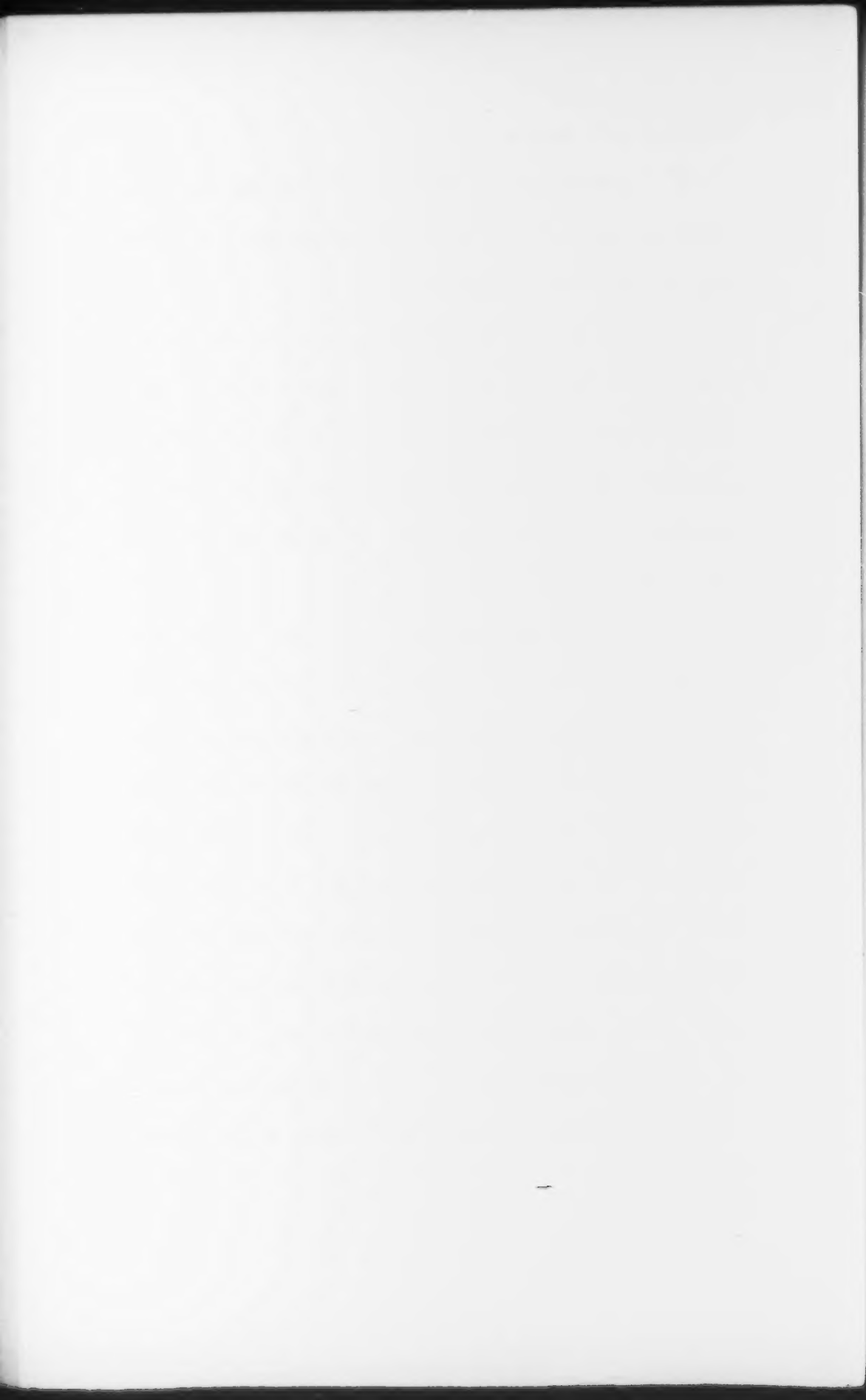
caused his death.

68. Decedent's death on September 28, 1986 arose out of and in the course of his employment by Respondent.

69. Decedent's average weekly wage at the time of his injury and death was sufficient to entitle him to the maximum weekly compensation rate which computed pursuant to the Workers' Compensation Act is \$408.00.

70. UPON REVIEW OF ALL THE EVIDENCE BEFORE ME, I AM SATISFIED CONCLUDE AND FIND that the requisite employer-employee relationship existed between Decedent and Respondent and, therefore, that they are subject to the provisions of the Act and that Decedent's death arose out of and in the course of his employment on September 28, 1986, and the Claimants are entitled to the benefits under the Act as claimed.

71. Decedent' serving under a contract

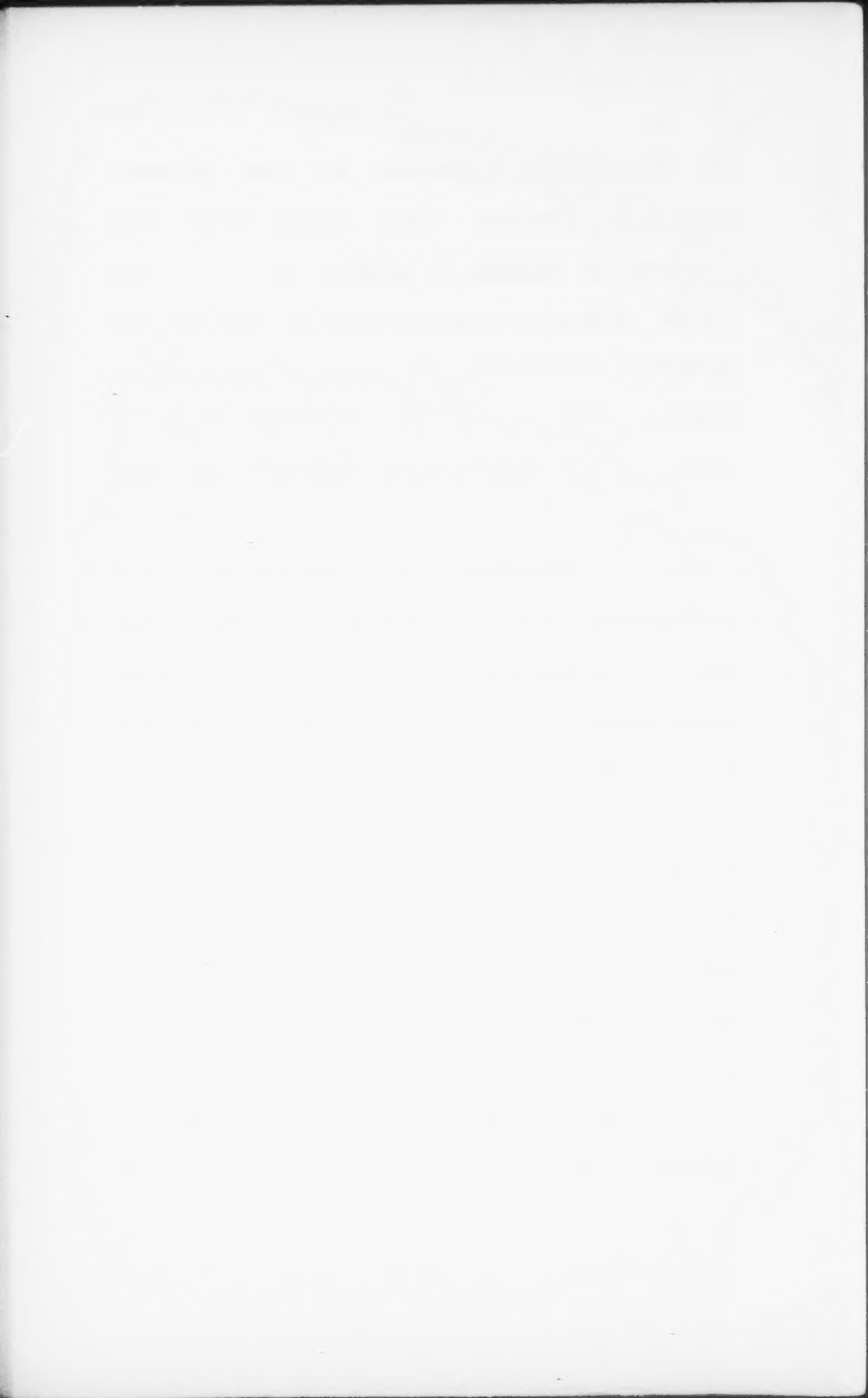


of employment pursuant to the general statutes removes this case from the holding in Sibley v. State, 89 Conn. 682 (1915) where an elected sheriff was denied workers' compensation benefits because in Sibley there was no finding that a contract of employment existed for the sheriff.

72. Decedent in accepting and performing judicial duties in return for fair compensation fulfilled the requirements for an employment contract within the meaning of Section 31-275(5).

73. I FURTHER FIND that Claimants have sustained the burden of proof in their claims and that their claims for weekly benefits, dependents' allowances, medical and hospital services and funeral expenses is sustained.

74. The claim for attorney's fees is DENIED. This claim presented complicated



legal and medical issues and considering the nature of the claim, and on the evidence before me, I am satisfied that Respondent had not unreasonably contested liability in this claim.

75. The claim for payment of interest on any claims herein is DENIED. I am satisfied that any delay in payment of compensation in this claim was caused primarily by the nature of the claim, and not through any fault or neglect of the Respondent.

76. IT IS THEREFORE ORDERED that Respondent pay to Claimant dependent widow \$408.00 weekly plus applicable cost of living benefits as provided in Section 31-306(b)(2) of the Connecticut General Statutes commencing September 29, 1986, and continuing until her death or remarriage if such should occur. Said weekly payments are to be adjusted



annually for cost of living as provided in said Section.

77. IT IS FURTHER ORDERED that Respondent pay to Claimant dependent widow the sum of \$10.00 per week for the benefit of dependent child, John Kinney, from September 29, 1986 until May 15, 1988, when said payment terminates upon conclusion of his full time attendance at a post secondary educational institution.

78. IT IS FURTHER ORDERED that Respondent pay Claimant dependent widow the sum of \$10.00 per week for the benefit of dependent child, Nancy Kinney, from September 29, 1986 until and when she concludes her full time attendance at a post secondary educational institution or reaches the age of twenty two in accordance with the provisions of Section 31-306.

79. IT IS FURTHER ORDERED that



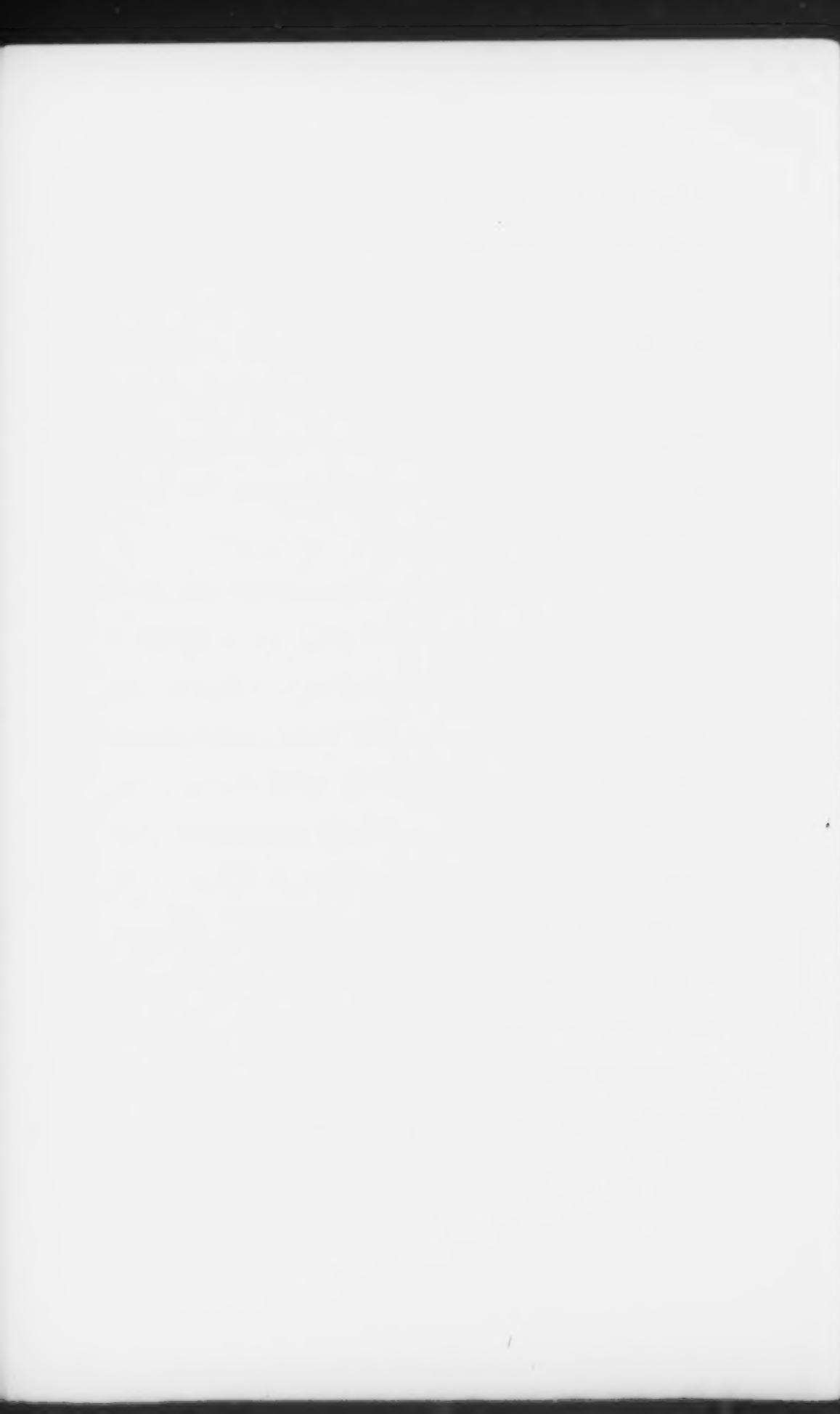
Respondent pay any reasonable and proper medical, hospital and ambulance bills incurred as a result of Decedent's injury and death.

80. IT IS FURTHER ORDERED that Respondent pay Claimant dependent widow the statutory burial allowance in the amount of \$3,000.00.

81. Doctors Lawrence Cohen and Phillip Fazzone appeared and testified in these proceedings and accordingly, there is allowed to Dr. Cohen for said appearance and testimony the sum of \$600.00 and to Dr. Fazzone for his said appearance and testimony the sum of \$600.00.

This order is subject to all proper modification in the event of any changes of circumstance.

WHEREFORE, IT IS ADJUDGED, DECREED, ORDERED AND AWARDED ACCORDINGLY.



Signed /s/Rhoda S. Loeb
Workers' Compensation
Commissioner for the
Third District



54

NOVEMBER, 1989 213 Conn. 54

Kinney v. State

JOAN A. KINNEY v. STATE OF CONNECTICUT
(13687)PETERS, C. J., SHEA, CALLAHAN, GLASS, COVELLO,
HULL and SANTANIELLO, Js.

The state, which had been ordered by a workers' compensation commissioner to pay survivorship benefits to the widow of a Superior Court judge, appealed to the compensation review division. The review division reserved for appellate advice the question whether a Superior Court judge is an employee as defined by statute (§ 31-275 (5)) for purposes of workers' compensation. *Held* that the legislature did not intend to include judges of the Superior Court within § 31-275 (5); the omission of judges of the Superior Court from the exclusive list of those public officials eligible for workers' compensation is persuasive evidence that the legislature did not intend the scope of § 31-275 (5) to embrace the judiciary.

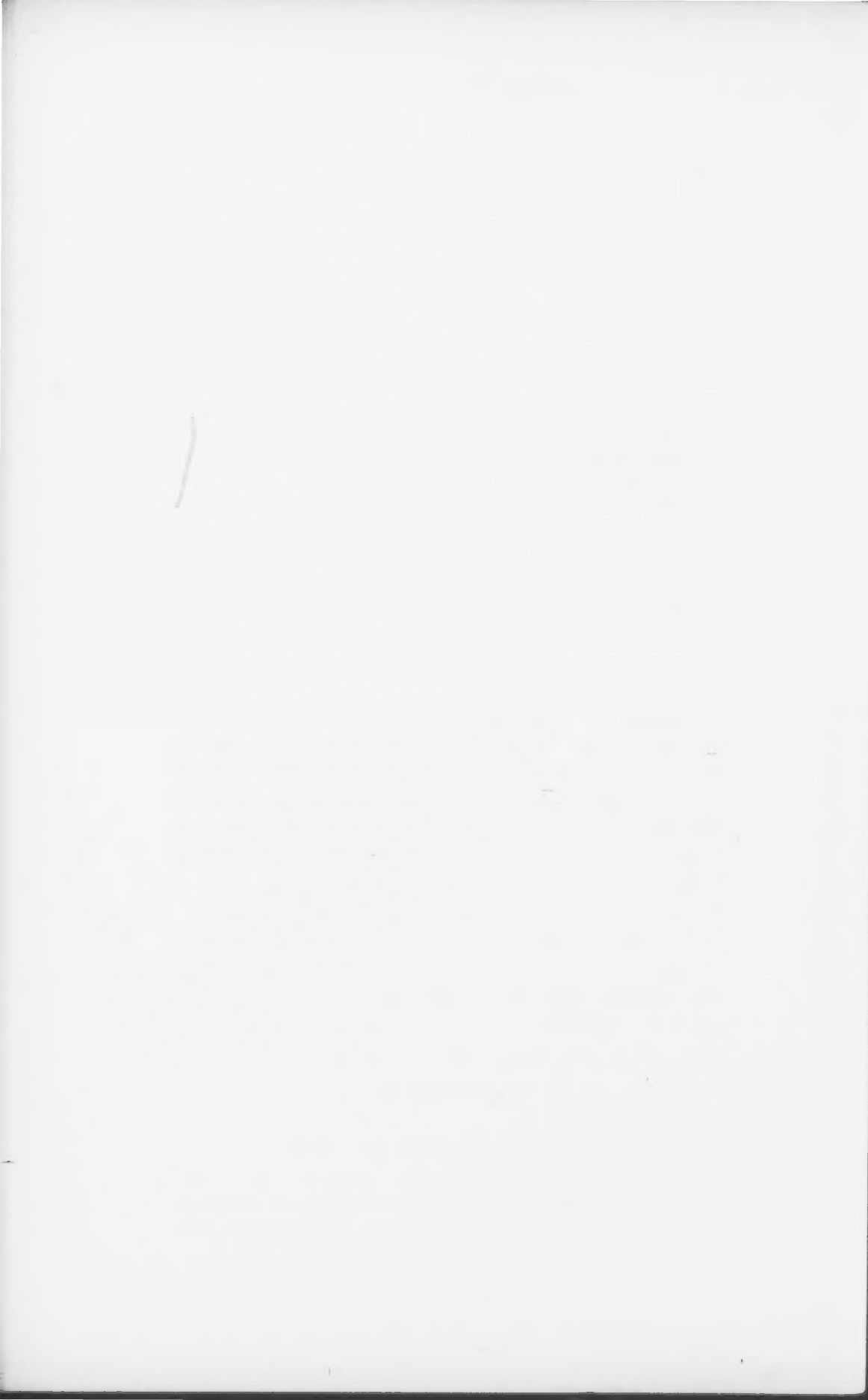
Argued October 3—decision released November 28, 1989*

Appeal by the defendant from a decision of the workers' compensation commissioner for the third district awarding survivorship benefits to the plaintiff, brought to the compensation review division, which reserved the questions of law for the advice of the Appellate Court; thereafter, the reservation was transferred to this court.

Brewster Blackall, assistant attorney general, with whom, on the brief, were *Clarine Nardi Riddle*, attorney general, and *Carl J. Schuman*, former assistant attorney general, for the appellant (state).

Roger J. Frechette, with whom was *Matthew E. Frechette*, for the appellee (plaintiff).

PETERS, C. J. The dispositive issue in this appeal is whether the legislature intended judges of the Superior Court to come within the jurisdictional confines of the Workers' Compensation Act, General Statutes



213 Conn. 54 NOVEMBER, 1989

55

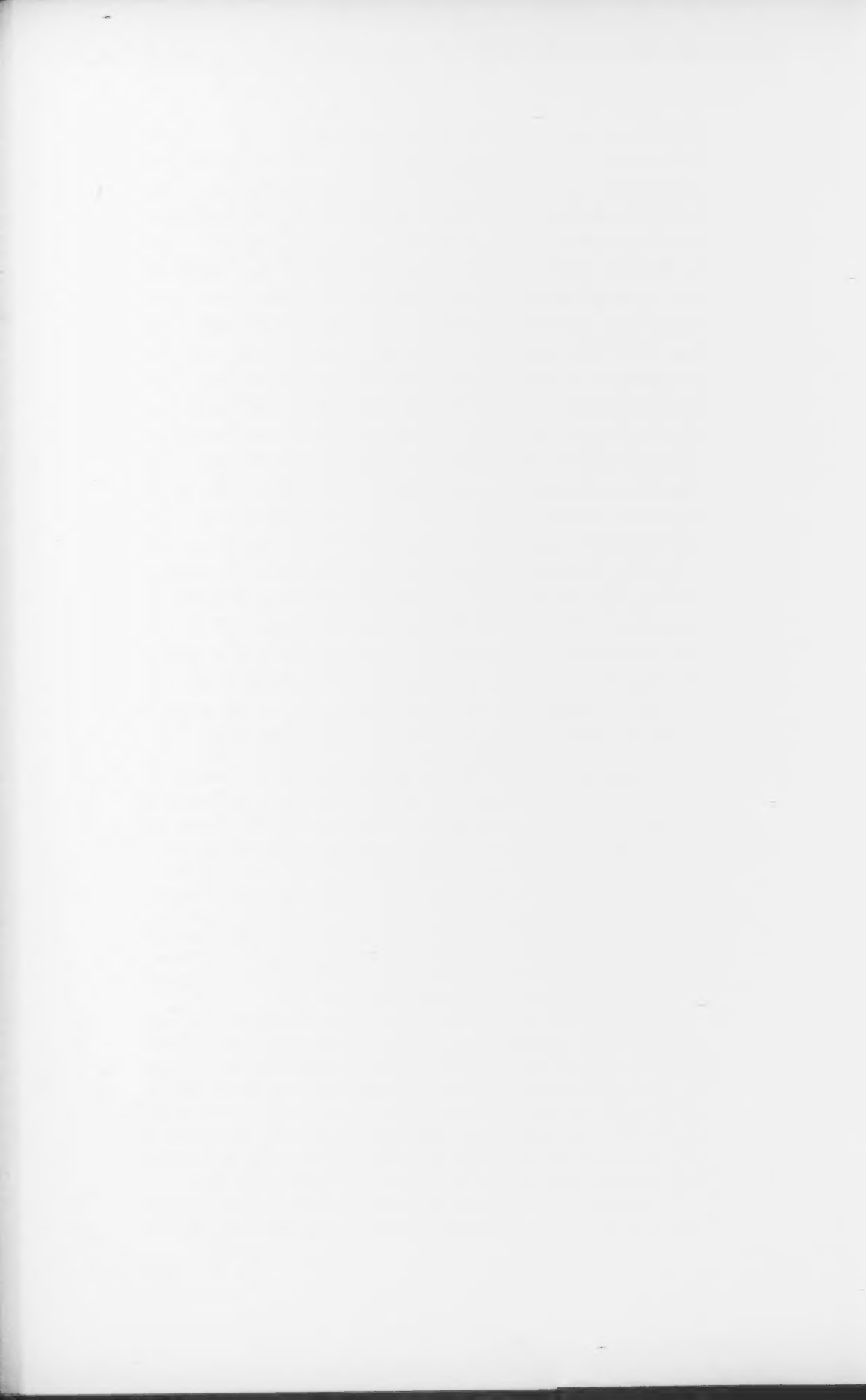
Kinney v. State

§ 31-275 et seq.¹ Following the death of her husband, the Honorable Frank J. Kinney, Jr., the plaintiff, Joan A. Kinney, filed a workers' compensation claim against the state alleging that the decedent's fatal heart condition was causally related to work-induced stress. Ruling that the decedent was an "employee" for the purposes of workers' compensation as defined by General Statutes § 31-275 (5) and that his death arose out of and in the course of his employment, the commissioner for the third district awarded the plaintiff the maximum allowable spousal survivorship benefits under General Statutes § 31-306 (b). In response to the defendant's appeal, pursuant to General Statutes § 31-301, the compensation review division, on its own motion, invoked the procedure authorized by General Statutes § 31-324,² to reserve to the Appellate Court the threshold jurisdictional issue of whether a Superior Court judge is an employee as defined by § 31-275 (5). We transferred this reservation to ourselves pursuant to Practice Book § 4023.³ We answer no.

¹ The compensation review division originally reserved two questions for the advice of this court: (1) Is a judge of the Superior Court of Connecticut an "employee" as defined in General Statutes § 31-275 (5)? (2) Does the widow of such a judge making a claim on her own and her children's behalf for survivor dependency benefits under General Statutes § 31-306 satisfy the prerequisite jurisdictional elements necessary to effect entitlement pursuant to General Statutes, chapter 568? Counsel for both parties stipulated at oral argument that, because the existence of an employee-employer relationship is a jurisdictional prerequisite to an award of compensation benefits, the first question presents a threshold issue dispositive of this appeal. We therefore do not reach the second question.

² General Statutes § 31-324 states in relevant part: "When, in any case arising under the provisions of this chapter, the compensation review division is of the opinion that the decision involves principles of law which are not free from reasonable doubt and which public interest requires shall be determined by the appellate court, in order that a definite rule be established applicable to future cases, said compensation review division may, on its own motion and without any agreement or act of the parties or their counsel, reserve such case for the opinion of the appellate court. . . ."

³ Procedurally, we have transferred this reservation to ourselves on two separate occasions. This court initially transferred the appeal to itself, but



Kinney v. State

The plaintiff sought workers' compensation benefits on the theory that the chronic stress connected with her husband's employment with the defendant contributed to his death. After the defendant contested her claim pursuant to General Statutes § 31-297 (b), the commissioner conducted a formal hearing as provided in General Statutes § 31-298.⁴ As a result of that hearing, the commissioner made the following findings of fact, which are not contested in this appeal. The decedent was first appointed to the state bench in 1972. At the time of his death, he had undertaken various administrative assignments in addition to his judicial responsibilities for the adjudication of criminal cases. The decedent was serving as the presiding criminal and administrative judge for the judicial district of New Haven, the chief administrative judge of the criminal division for the entire state and also as the chairman of the Commission to Study Alternate Sentences. The defendant at all times controlled, supervised and regulated the decedent's administrative duties. The decedent, by accepting and performing judicial and administrative duties in return for fair compensation, had entered into an employment relationship with the

subsequently returned it to the compensation review division by order on January 19, 1989, for a decision on the plaintiff's motion to dismiss the appeal. On April 6, 1989, the compensation review division denied the plaintiff's motion to dismiss for a procedural defect because, as a threshold matter, the review division could not exercise its competence over the claim until resolution of the jurisdictional challenge. The compensation review division resubmitted its jurisdictional reservation to the Appellate Court and we once again transferred the matter to this court pursuant to Practice Book § 4023.

⁴ General Statutes § 31-298 provides in relevant part: "In all cases and hearings under the provisions of this chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry in such manner . . . as is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit of this chapter."



Kinney v. State

defendant. The unusual work pressures⁵ associated with the decedent's excessive administrative workload resulted in chronic stress that contributed to the development of coronary artery disease and exacerbated his preexisting myocardial atherosclerosis.⁶ The myocardial infarction that resulted in his death was precipitated in part by the chronic stress associated with his prodigious judicial duties.⁷

On the basis of these findings of fact, the commissioner concluded that the decedent's employment relationship with the defendant constituted a contract of employment for the purposes of the Workers' Compensation Act; General Statutes § 31-275 (5); and that the decedent's death arose out of and in the course of his employment. Accordingly, the commissioner awarded the plaintiff the maximum allowable spousal survivorship benefits under § 31-306 (b) (2).⁸

⁵ The decedent's immediate supervisor, Chief Court Administrator Aaron Ment, testified and the commissioner so found that " 'five hats were a lot of work to do' and that no single judge since then does all these jobs anywhere in the state."

⁶ The fact that a finding of similar causality by the commissioner in the case of a private employee covered by workers' compensation would result in an award of benefits; *McDonough v. Connecticut Bank & Trust Co.*, 204 Conn. 104, 119, 527 A.2d 664 (1987); sheds no light on the legal issue presently before us regarding the applicability of the Workers' Compensation Act to judges of the Superior Court.

⁷ Although the defendant initially contested its liability by claiming that the decedent's heart conditions were preexisting and not causally related to his work, it declined to challenge the causality finding on appeal.

⁸ The commissioner ordered the defendant to pay the plaintiff dependent widow \$408 weekly plus the applicable cost of living increase as provided in General Statutes § 31-306 (b) (2), any reasonable medical bills incurred as a result of his death, and the statutory burial allowance of \$3000. Initially, the commissioner also had awarded the decedent's minor children benefits in the amount of \$10 weekly, but that award was later revoked in a corrected finding by the commissioner because survivorship benefits under § 31-306 do not provide for dependency benefits under General Statutes § 31-308b.



Kinney v. State

In its appeal to the compensation review division, the defendant challenged the validity of the commissioner's determination that the instant case falls within the jurisdiction of the Workers' Compensation Act. The defendant maintained then, as it does now, that a judge of the Superior Court is not an employee for the purposes of workers' compensation, and does not have an employer-employee relationship with the defendant. The review division decided to seek guidance on these questions of law, and propounded the reservation that is presently before us.

We must decide in this case whether the legislature intended the Workers' Compensation Act to confer jurisdiction upon the commissioner to award benefits to the plaintiff. Even though the plaintiff has presented a factual record that warrants sympathetic consideration of her claims, her entitlement to relief cannot transcend the jurisdictional limits of the statute under which she seeks recovery. Once an issue of subject matter jurisdiction is raised,⁹ the court must dispose of this legal question as a threshold matter. *Concerned Citizens of Sterling v. Sterling*, 204 Conn. 551, 556-57, 529 A.2d 666 (1987); *Cahill v. Board of Education*, 198 Conn. 229, 238, 502 A.2d 410 (1985). " "[W]henever a court discovers that it has no jurisdiction, it is bound to dismiss the case, without regard to previous rulings." ' *Chzrislonk v. New York, N.H. & H. R. Co.*, 101 Conn. 356, 358, 125 A. 874 (1924)." *Cahill v. Board of Education*, supra; *Pet v. Department of Health Services*, 207 Conn. 346, 351, 542 A.2d 672 (1988). The applicability of these principles is no less compelling in the instant case where the limited and statutory jurisdiction at issue is the legislative will as expressed in the Workers' Compensation Act. Although the Workers' Com-

⁹ Both the defendant and the compensation review division on its own motion raised the question of subject matter jurisdiction in the instant case.



Kinney v. State

pensation Act "should be broadly construed to accomplish its humanitarian purpose"; *Adzima v. UAC/Norden Division*, 177 Conn. 107, 117, 411 A.2d 924 (1979); *Perille v. Raybestos-Manhattan-Europe, Inc.*, 196 Conn. 529, 541, 494 A.2d 555 (1985); its remedial purpose cannot transcend its statutorily defined jurisdictional boundaries. *Castro v. Viera*, 207 Conn. 420, 435, 541 A.2d 1216 (1988); *Perille v. Raybestos-Manhattan-Europe, Inc.*, supra, 541-42; *Jester v. Thompson*, 99 Conn. 236, 238, 121 A. 470 (1923). "The act is not triggered by a claimant until he brings himself within its statutory ambit." *Castro v. Viera*, supra, 433.

The plaintiff would have us resolve the jurisdictional issue in this case by deferring to the commissioner's findings of fact. This we cannot do. We recognize that the commissioner found that the decedent's judicial duties amounted to a contractual relationship with the defendant such that he was an "employee" for purposes of workers' compensation as defined by § 31-275 (5). While it is correct that "[b]ecause only employees are entitled to compensation under the act . . . coverage must arise from a contract of employment, either express or implied"; *Blancato v. Feldspar Corporation*, 203 Conn. 34, 38, 522 A.2d 1235 (1987); *Sibley v. State*, 89 Conn. 682, 686-87, 96 A. 161 (1915); our jurisdictional inquiry is not limited to the commissioner's factual finding of the decedent's contract of employment with the defendant. The elements of subject matter jurisdiction are "*dependent upon both law and fact.*" (Emphasis added.) *Castro v. Viera*, supra, 433. Although the plaintiff correctly asserts that the power and duty of determining facts rests on the commissioner as the trier of facts; *Fair v. People's Savings Bank*, 207 Conn. 535, 539, 542 A.2d 1118 (1988); the conclusions drawn by the commissioner cannot stand when they result from an incorrect application of the law. *Id.*; *Adzima v. UAC/Norden Division*, supra, 118.



Kinney v. State

The commissioner exercises jurisdiction only " 'under the precise circumstances and in the manner particularly prescribed by the enabling legislation.' *Heiser v. Morgan Guaranty Trust Co.*, 150 Conn. 563, 565, 192 A.2d 44 (1963)." *Castro v. Viera*, supra, 427-28.¹⁰ The parties cannot confer jurisdiction upon the commissioner by agreement, waiver or conduct. *Id.*, 430; *Jester v. Thompson*, supra, 238. The plaintiff may invoke the remedy provided under the Workers' Compensation Act only if her decedent, as a matter of law, satisfies the requisite jurisdictional standard of "employee" as defined by the legislature in § 31-275 (5).¹¹ The legal question before us, therefore, is whether the legislature intended to include judges of the Superior Court within § 31-275 (5).

- We begin our examination of the scope of § 31-275 (5) by recourse to the accepted rules of statutory construction. We look first to the text of § 31-275 (5) itself. Because § 31-275 (5) consists of a functional definition with expressly delineated exceptions, for purposes of clarity, we will focus first on the operative meaning before integrating the exceptions into our analysis. Section 31-275 (5) defines "employee" in relevant part as "any person who has entered into or works under any contract of service or apprenticeship with an employer" This language, on its face, expresses no clear legislative intent as to whether a member of the judi-

¹⁰ Like courts of probate; *In re Juvenile Appeal (85-BC)*, 195 Conn. 344, 366-67 n.18, 488 A.2d 790 (1985); and administrative agencies; *Waterbury v. Commission on Human Rights & Opportunities*, 160 Conn. 226, 230, 278 A.2d 771 (1971); workers' compensation commissioners must act strictly within their statutory authority and cannot unilaterally modify, abridge or otherwise change such provisions because the act's enabling legislation does not expressly grant that power. *Castro v. Viera*, 207 Conn. 420, 428-29, 541 A.2d 1216 (1988).

¹¹ General Statutes § 31-275 (6) defines "employer" for purposes of establishing liability under the act. It is uncontested that the defendant may be found to be an "employer" under § 31-275 (6).



213 Conn. 54 NOVEMBER, 1989

61

Kinney v. State

itary is a covered "employee." In ascertaining legislative intent, however, the legislature is presumed to know the history of a statute as judicially construed. *Nichols v. Warren*, 209 Conn. 191, 202 n.8, 550 A.2d 309 (1988); *Peck v. Jacquemin*, 196 Conn. 53, 71, 491 A.2d 1043 (1985). Our decisions concerning the eligibility of individuals working in the public sector for workers' compensation benefits have long distinguished between public officers and public employees, and have held that public officers not expressly included within the definition provided by § 31-275 (5) are not "employees" for the purposes of the act. *McDonald v. New Haven*, 94 Conn. 403, 417-18, 109 A. 176 (1920); *Sibley v. State*, supra, 685.

It is undisputed that judges of the Superior Court meet the three part test that determines the existence of a public office: " '(1) an authority conferred by law, (2) a fixed tenure of office, and (3) the power to exercise some portion of the sovereign functions of government. *Kelly v. Bridgeport*, 111 Conn. 667, 671, 151 A. 268 [1930]; *Mechem*, Public Officers § 1.' " *Murach v. Planning & Zoning Commission*, 196 Conn. 192, 198, 491 A.2d 1058 (1985). The Connecticut constitution so provides. With respect to the first and third prongs, article second of the Connecticut constitution, in dividing the broad powers of government into three distinct branches, confers "a separate [judicial] magistracy" upon a "distinct department," the judiciary; *Pellegrino v. O'Neill*, 193 Conn. 670, 679, 480 A.2d 476, cert. denied, 469 U.S. 875, 105 S. Ct. 236, 83 L. Ed. 2d 176 (1984); *Heiberger v. Clark*, 148 Conn. 177, 185, 169 A.2d 652 (1961); while article fifth, § 1 describes its organizational structure and reiterates that its powers and jurisdiction shall be defined by law. With respect to the second prong, article fifth, § 2 provides in relevant part: "They shall hold their offices for the term of eight years" Moreover, the judiciary's right



Kinney v. State

to compensation as public officers falls clearly within the distinction contemplated in *Sibley v. State*, supra, 685, where this court denied workers' compensation benefits to a sheriff because, as a public officer, his right to compensation " 'belongs to him not by force of any contract, but because the law attaches it to the office.' " ¹² Id., quoting *Mechem*, supra, §§ 855 and 856.

The distinction between public employees and public officers, for the purpose of workers' compensation, finds textual recognition in the jurisdictional definitions contained in the Workers' Compensation Act. Section 31-275 (5) expressly includes some public officers, but not judges, within the class of those eligible for workers' compensation by defining "employee" in relevant part to "include any person elected to serve as a member of the general assembly of this state and . . . any salaried officer or paid member of any police department or fire department and any elected or appointed official or agent of any city, town or borough, upon vote of the proper authority of such city, town or borough" This enumeration would have been wholly unnecessary had these public officials constituted employees under the analysis of *Sibley v. State*, supra. Because, for purposes of statutory construction, we presume a purpose behind every sentence, clause or phrase in a legislative enactment; *Peck v. Jacquemin*, supra, 66; we must attach significance to the legislature's intention to grant workers' compensation only to those public officers expressly described in

¹² Attorney General Carl R. Ajello confirmed this distinction in an informational opinion in the form of a letter to State Comptroller J. Edward Caldwell dated January 21, 1976. In response to an inquiry whether a Superior Court judge, suspended from service by the Judicial Department pending disposition of a criminal charge against him, is entitled to his regular salary, the attorney general stated that "[A] Judge of the Superior Court is one who holds an office," and that his "right to a salary depends upon the legal title to the office and not upon the performance of the work."



Kinney v. State

§ 31-275 (5). Statutory itemization indicates that the legislature intended the list to be exclusive. *The B. F. Goodrich Co. v. Dubno*, 196 Conn. 1, 6, 490 A.2d 991 (1985).

The legislative history of the evolution of the definition of "employee" under the Workers' Compensation Act supports our conclusion that the legislature intended the express inclusions enumerated in § 31-275 (5) to be exclusive. Until 1921, the definition of "employee" necessary to invoke workers' compensation had been limited to "any person who has entered into or works under any contract" General Statutes (1918 Rev.) § 5388. When we construed this contractual language to deny benefits to a member of a municipal fire department in *McDonald v. New Haven*, supra, 417-18, however, the legislature expressly amended the definition to bypass the decisional law for a specific category of public positions. See General Statutes (1918 Rev.) § 5388, as amended by chapter 306, § 11 of the Public Acts of 1921. Each subsequent addition to the category of public positions evinces an intention on the part of the legislature carefully to circumscribe the expansion of named beneficiaries.¹³ The telling omission of judges of the Superior Court from this exclusive list of expressly included exceptions is persuasive evidence that the legislature did not intend the scope of § 31-275 (5) to embrace the judiciary.

¹³ For example, the legislature expanded the definition of "employees" to include members of the General Assembly in 1972. The legislative history of the debate surrounding passage of that legislation is particularly instructive on the point that the legislature was aware that state officers do not receive their salary as a matter of contract of service and would thus need a special amendment bypassing decisional law in order to qualify for workers' compensation benefits. Representative Gerald F. Stevens remarked: "I would submit to you that once you take the oath of office you don't ever have to come here and you are entitled to your pay." 15 H.R. Proc., Pt. 6, 1972 Sess., p. 2494A-55.

Kinney v. State

Our conclusion that the distinction between employment and public office is firmly embedded in our law of workers' compensation does not conflict with the proposition that, in other circumstances, a public official may be considered an employee. "[A] municipal position, for certain purposes, may constitute a 'public office' and, for others, mere employment." *Murac v. Planning & Zoning Commission*, supra, 200; *State ex rel. Sloane v. Reidy*, 152 Conn. 419, 426, 209 A.2d 674 (1965). With respect to judges of the Superior Court, and the Probate Court administrator, the legislature has determined, as General Statutes § 45-29u¹⁴ indicates, that they have the same entitlement to group life and health insurance as is expressly afforded to other state employees and members of the General Assembly by General Statutes §§ 5-257¹⁵ and 5-259¹⁶.

¹⁴ General Statutes § 45-29u provides in relevant part: "PROBATE COURT ADMINISTRATOR, SALARY AND BENEFITS. (a) The probate court administrator shall be paid by the judicial department and shall be compensated in the same manner and amount as a superior court judge as provided in section 51-47. . . .

"(b) The probate court administrator shall receive: (1) Retirement benefits provided in sections 51-49 to 51-50b, inclusive, and section 51-51; (2) life insurance benefits provided in section 5-257; (3) medical insurance benefits as provided in section 5-259; and (4) any other benefits which may be established for superior court judges by the general assembly or by the judicial department."

¹⁵ General Statutes § 5-257 provides in relevant part: "GROUP LIFE INSURANCE. (a) The comptroller, with the approval of the attorney general and of the insurance commissioner, may revise the group insurance plan for employees of the state by amendment of any existing group life insurance policy or policies or by procuring from one or more life insurance companies authorized to do business in Connecticut a policy or policies of group life insurance covering employees of the state. Each employee in active state service shall be eligible for insurance under this section, provided he shall have completed more than six months' continuous state service, and each member of the general assembly shall be eligible for insurance under this section, six months after taking office."

¹⁶ General Statutes § 5-259 provides in relevant part: "HOSPITALIZATION AND MEDICAL AND SURGICAL INSURANCE PLAN. ELIGIBILITY. (a) The comptroller, with the approval of the attorney general and of the insurance com

213 Conn. 54 NOVEMBER, 1989

65

Kinney v. State

of the State Personnel Act. Workers' compensation is not among the benefits enumerated in § 45-29u.

It bears noting, finally, that the legislature has enacted comprehensive provisions concerning benefits specifically for judges. General Statutes, chapter 872. These statutes not only provide annual salaries; General Statutes § 51-47;¹⁷ but include specific entitlements to disability retirement; General Statutes § 51-49; retirement salary and allowance to surviving spouses; General Statutes § 51-49f; and pensions for surviving spouses and children. General Statutes § 51-51. The legislature conspicuously failed to include workers' compensation within the benefits conferred upon judges by chapter 872. Since the legislature is presumed to exercise its statutory authority with knowledge of existing statutes and with the intention of creating one consistent body of law; *Shortt v. New Milford Police Department*, 212 Conn. 294, 302, 562 A.2d 7 (1989); *Commissioner v. Freedom of Information Commission*, 204 Conn. 609, 621, 529 A.2d 692 (1987); it is reasonable to infer that the legislature would not have intended, sub silentio, to confer such a benefit upon the judiciary. The more rational explanation for the legis-

missioner, shall arrange and procure a group hospitalization and medical and surgical insurance plan or plans for (1) state employees, (2) members of the general assembly who elect coverage under such plan or plans, (3) participants in an alternate retirement program who meet the service requirements of section 5-162 or subsection (a) of section 5-166, and (4) anyone receiving benefits from any state-sponsored retirement system, except the teachers' retirement system, the municipal employees retirement system, the general assembly pension system and the probate judges and employees retirement system."

¹⁷ As the state maintains, it is clear as a matter of law that a statutorily mandated salary, such as provided for judges in General Statutes § 51-47, does not create a private contract. "[T]here exists a 'well-established presumption' against finding that a statute creates private vested contractual rights absent a clear showing of legislative intent to the contrary. *Taliaferro v. Dykstra*, 434 F. Sup. 705, 710-11 (E.D. Va. 1977)." *Pineman v. Uechselin*, 195 Conn. 405, 410-11, 488 A.2d 803 (1985).



66

NOVEMBER, 1989 213 Conn. 66

Connelly v. Doe

lature's silence is that the legislature concluded that it would be duplicative to provide both disability benefits and workers' compensation benefits to these public officers.

To construe § 31-275 (5) to include members of the judiciary within the class of those entitled to receive workers' compensation benefits would constitute a radical departure from established policy. We will not infer that the legislature intended to enact a significant change in existing law without an unequivocally expressed manifestation of legislative intent. *Iacomucci v. Trumbull*, 209 Conn. 219, 222, 550 A.2d 640 (1988); *Jennings v. Connecticut Light & Power Co.*, 140 Conn. 650, 667, 103 A.2d 535 (1954). Were this court to award compensation benefits to the spouse of a deceased judge, we "would be legislating by adding a new class to the coverage of this act which proclaims its limited scope." *Castro v. Viera*, *supra*, 435. This we cannot do.

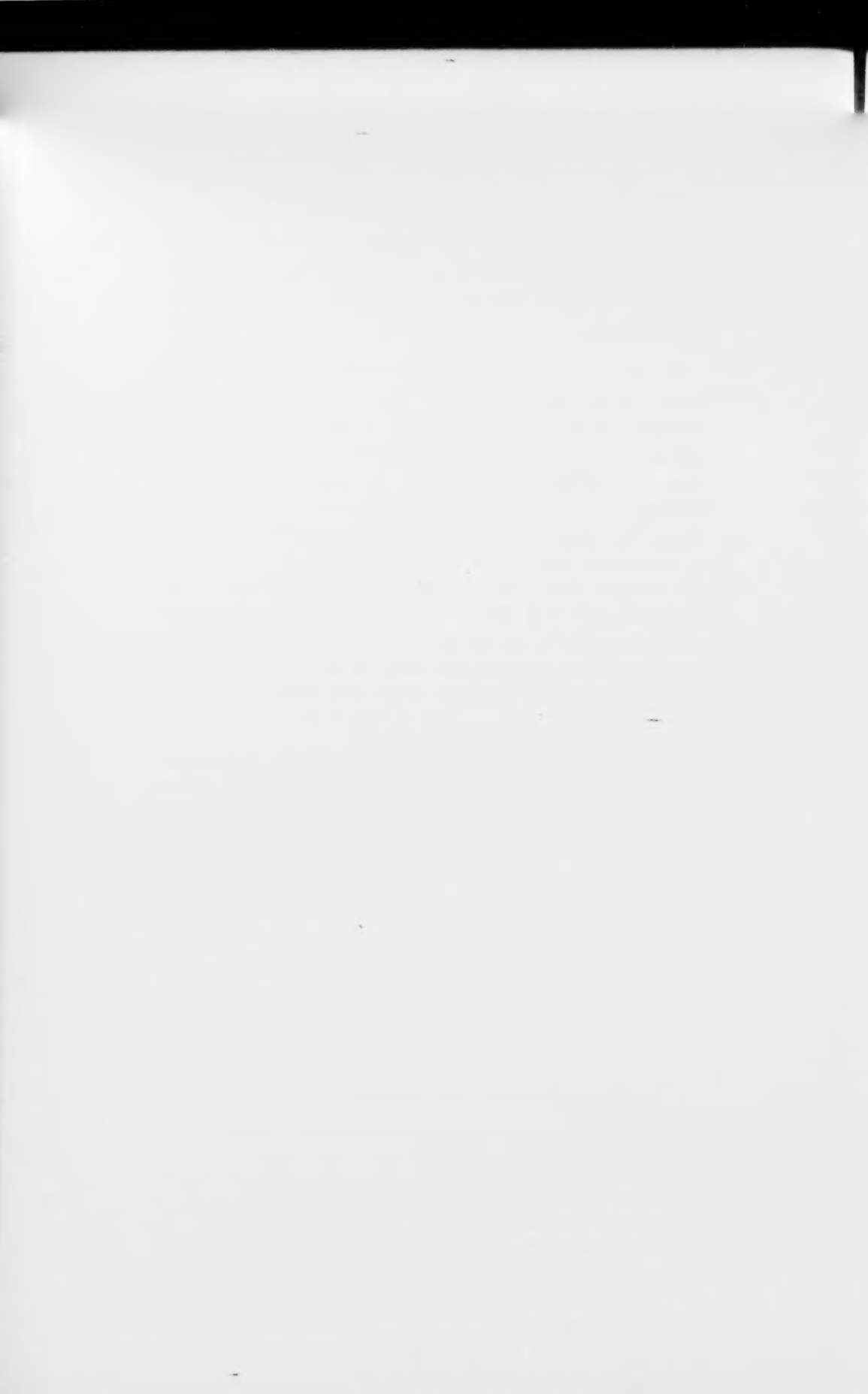
In response to the reservation from the compensation review division, whether a judge of the Superior Court is an "employee" for purposes of entitlement to workers' compensation as defined by § 31-275 (5), we answer no.

In this opinion the other justices concurred.

JOHN A. CONNELLY, STATE'S ATTORNEY *v.*
JOHN DOE, M.D.
(13707)

PETERS, C. J., HEALEY, SHEA, CALLAHAN and COVELLO, Js.

The plaintiff state's attorney sought to have the defendant psychiatrist found in contempt for his failure to comply with a subpoena duces tecum issued by a one-man grand jury appointed in November, 1983, to investigate possible fraud, corruption and patient abuse involving medicaid providers. The subpoena was directed to the period from January 1, 1985, through September 30, 1987. The defendant moved to quash the



C

STATE OF CONNECTICUT

SUPREME COURT

NO. 13687

JOAN A. KINNEY

V.

STATE OF CONNECTICUT : JANUARY 2, 1990

O R D E R

THE MOTION OF THE PLAINTIFF, FILED
DECEMBER 11, 1990, FOR REARGUMENT, HAVING
BEEN PRESENTED TO THE COURT, IT IS HEREBY
O R D E R E D DENIED.

BY THE COURT

/S/Francis J. Drumm

Chief Clerk



D

CASE NO. 786 CRD-3-88-11

JOAN A. KINNEY, COMPENSATION
Depen. Widow of FRANK J. REVIEW
KINNEY (deceased) DIVISION
CLAIMANT-APPELLEE

vs.

WORKERS' COM-
PENSATION COM.

STATE OF CONNECTICUT
EMPLOYER

RESPONDENT-APPELLANT DECEMBER 12, 1989

ORDER

In accordance with the Supreme Court ruling, Kinney v. State of Conn. 213 Conn. 54 (11/28/89), The October 27, 1988 Finding and Award of The Third District Commissioner, and the corrected Finding and Award of November 15, 1988 are reversed as the Workers' Compensation Commission lacks jurisdiction in the matter.

/s/John Arcudi, Chairman
Compensation Review Division
Workers' Compensation Commission



E

APPELLATE COURT
STATE OF CONNECTICUT

A.C. 8817

JOAN A. KINNEY

V

STATE OF CONNECTICUT MARCH 28, 1990

O R D E R

AFTER HEARING ON THE QUESTION WHY THE ORDER OF THE COMPENSATION REVIEW DIVISION DATED DECEMBER 12, 1989, REVERSING THE COMMISSIONER'S FINDING AND AWARD DATED OCTOBER 27, 1988, SHOULD NOT BE AFFIRMED, IT IS HEREBY ORDERED THAT THE ORDER OF THE COMPENSATION REVIEW DIVISION DATED DECDMBER 12, 1989, REVERSING THE COMMISSIONER'S FINDING AND AWARD DATED OCTOBER 27, 1988, IS AFFIRMED.

BY THE COURT

/s/Lawrence Alexander
Assistant Clerk-Appellate

ORDERS

215 Conn. 807

JOAN A. KINNEY v. STATE OF CONNECTICUT

The plaintiff's petition for certification for appeal from the Appellate Court is denied.

Roger J. Frechette, in support of the petition.

Brewster Blackall, assistant attorney general, in opposition.

Decided May 10, 1990

No. 90-280

2

Supreme Court, U.S.

FILED

SER 12 1990

JOSEPH F. SPANIOLO, JR.
CLERK

In The

Supreme Court Of The United States

OCTOBER TERM, 1990

JOAN A. KINNEY,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

**BRIEF IN OPPOSITION TO THE
PETITION FOR A WRIT OF CERTIORARI
TO THE CONNECTICUT APPELLATE COURT**

CLARINE NARDI RIDDLE
ATTORNEY GENERAL

CHARLES OVEREND
CAROLYN QUERIJERO
BREWSTER BLACKALL

(Counsel of Record)

Assistant Attorneys General

P.O. Box 120

Hartford, CT 06101

Tel. (203) 566-3495

Attorneys for Respondent

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1) Whether, when a state court has determined that a state officer is not entitled to workers' compensation benefits pursuant to the state workers' compensation act, there being no contract of employment under state law, petitioner has presented any federal question of impairment of contract under the U.S. Constitution, art. 1, § 10?

2) Whether the petitioner has properly and timely raised a federal question where it was not raised at trial or on the appeal question reserved to the state supreme court, nor raised as a stated issue on motion for reargument nor on subsequent appeal to the state appellate court?

3) Whether, for the purpose of Supreme Court review, the state proceeding was final at the time the state supreme court denied claimant's motion to reargue, January 2, 1990, and therefore the petition for writ of certiorari docketed August 7, 1990 is not timely?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
COUNTER STATEMENT OF THE CASE	2
ARGUMENT — REASONS FOR DENYING THE WRIT	5
I. THE PETITIONER HAS RAISED NO FEDERAL QUESTION FOR REVIEW, AND HER RELIANCE ON <i>FISK V.</i> <i>JEFFERSON POLICE JURY</i> IS MIS- PLACED AND INAPPROPRIATE	5
II. THE PETITIONER HAS NOT PROPERLY OR TIMELY RAISED THE ISSUE OF CONTRACT IMPAIRMENT PURSUANT TO THE U.S. CON- STITUTION, ART. I, § 10, AND THEREFORE THE COURT LACKS JURISDICTION	7
III. FOR THE PURPOSE OF SUPREME COURT REVIEW, THE STATE PROCEEDING WAS FINAL AT THE TIME THE STATE SUPREME COURT DENIED CLAIMANT'S MOTION TO REARGUE, JANUARY 2, 1990, AND THERE- FORE THE PETITION FOR WRIT OF CERTIORARI DOCKETED AUGUST 7, 1990 IS NOT TIMELY	8
CONCLUSION	10
APPENDIX	

TABLE OF AUTHORITIES

Cases:	Page(s)
<i>Castro v. Viera</i> , 207 Conn. 420, 541 A.2d 1216 (1988)	2, 6
<i>Consolidated Turnpike Co. v. Norfolk & O.V.R. Co.</i> , 228 U.S. 326 (1913)	8
<i>Dodge v. Board of Education</i> , 302 U.S. 74 (1937)	6
<i>Fisk v. Jefferson Police Jury</i> , 116 U.S. 131 (1885)	5
<i>Forbes v. State Council</i> , 216 U.S. 396 (1910)	8
<i>Kinney v. State</i> , 213 Conn. 54, 566 A.2d 670 (1989)	1, 2, 3, 6, 8
<i>Live Oak Water Users' Association v. Railroad Commission</i> , 269 U.S. 354 (1926)	8
<i>Local No. 438 Construction and General Laborers' Union v. Curry</i> , 371 U.S. 542 (1963)	9
<i>McDonald v. New Haven</i> , 94 Conn. 403, 109 A.176 (1920)	3
<i>Mills v. State of Alabama</i> , 384 U.S. 216 (1966)	9
<i>Pineman v. Oechslin</i> , 195 Conn. 405, 488 A.2d 803 (1985)	6
<i>Radio Station WOW, Inc. v. Johnson</i> , 326 U.S. 120 (1945)	8
<i>Sibley v. State</i> , 89 Conn. 682, 96 A.161 (1915)	3

TABLE OF AUTHORITIES (continued)

Constitutional Provisions and Federal Statutes: Page(s)

U.S. Constitution, art. I, § 10 2, 7

Title 28 U.S.C. 1257(a) (1988) 7, 9

Title 28 U.S.C. § 1257(3) 7

Title 28 U.S.C. § 2101(c) 9

Conn. Const. art. 5, § 1 6

State Statutes:

Chapter 568, §§ 31-275 *et seq.*, The Workers'

 Compensation Act 2, 3, 5

Conn. Gen. Stat. § 31-275 (5) 3

Conn. Gen. Stat. § 31-306 2

Miscellaneous:

U.S. Supreme Court Rule 14.1(h) (1990) 7

No. 90-280

**In The
Supreme Court Of The United States**

OCTOBER TERM, 1990

JOAN A. KINNEY,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

**BRIEF IN OPPOSITION TO THE
PETITION FOR A WRIT OF CERTIORARI
TO THE CONNECTICUT APPELLATE COURT**

The State of Connecticut, respondent, for reasons set out herein, urges the Court to deny issuance of a writ of certiorari to review the judgment of *Kinney v. State*, Connecticut Appellate Court, No. A.C. 8817, March 28, 1990.¹ (Petitioner's Appendix p. 40.)

¹ This is an unreported judgment order relating to *Kinney v. State*, 213 Conn. 54, 566 A.2d 670, November 28, 1989.

COUNTER STATEMENT OF THE CASE

Following the death in September, 1986 of her husband, Judge Frank Kinney of the Connecticut Superior Court, the petitioner filed a claim for workers' compensation benefits as the dependent surviving spouse of Judge Kinney, pursuant to the state Workers' Compensation Act, and in particular Conn. Gen. Stat. § 31-306, which provides for survivors' benefits.

The State contested the claim on the ground that state superior court judges are officers of the state and not "employees" within the definition of the Workers' Compensation Act. An employer-employee relationship, as those terms are defined in the act, must be found in order for the State Workers' Compensation Commission to have jurisdiction over a claim for compensation. *Castro v. Viera*, 207 Conn. 420, 433, 541 A.2d 1216 (1988).²

The petitioner argued that the decedent was an employee pursuant to an implied contract of employment with the state and the compensation trial commissioner so found. The respondent state consistently opposed this argument, and denied that an employer-employee relationship or that a contract of employment existed for purposes of the Workers' Compensation Act. *Kinney v. State*, 213 Conn. 54, 58, 566 A.2d 670 (1989).

At no time during the trial did petitioner raise the issue of impairment of contract pursuant to the U.S. Constitution, art. I, § 10. (See Finding & Award, Petitioner's Appendix pp. 1-25.)

The State appealed the commissioner's award to the review division of the Workers' Compensation Commission. That tribunal, pursuant to statute, reserved to the state appellate court the question: "Is a Judge of the Superior Court of

² The claim of petitioner is derivative of her husband's.

Connecticut an 'employee' as defined in Sec. 31-275(5), C.G.S.?" The state supreme court transferred the reservation to itself and answered the question in the negative, holding that because a judge of the superior court is a public officer as opposed to an employee, he does not fall within the purview of the Workers' Compensation Act. *Kinney v. State*, 213 Conn. at 66. (Petitioner's Appendix pp. 25a-37.)

Our [state supreme court] decisions concerning the eligibility of individuals working in the public sector for workers' compensation benefits have long distinguished between public officers and public employees, and have held that public officers not expressly included within the definition provided by § 31-275(5) are not "employees" for the purposes of the act.

Kinney, 213 Conn. at 61 citing *McDonald v. New Haven*, 94 Conn. 403, 417-18, 109 A.176 (1920) and *Sibley v. State*, 89 Conn. 682, 685, 96 A.161 (1915).

As during the trial, the federal constitutional issue was not presented as an issue by petitioner to the supreme court on the reservation. (Appendix, p. 1A, Claimant's counter statement of issue.)

Petitioner moved for reargument on the reserved question before the supreme court and in that motion first made reference in a single line to "the state and federal constitutions," but did not clearly raise a federal constitutional issue. (Appendix, pp. 2A-3A.) The motion was denied January 2, 1990. (Petitioner's Appendix p. 38.)

By order of December 12, 1989, the compensation review division reversed the compensation trial commissioner's

Finding and Award due to lack of jurisdiction. (Petitioner's Appendix p. 39.)³

Asserting that the review division still had jurisdiction of the state's original appeal to it, petitioner moved to dismiss that appeal, thereby leaving the trial commissioner's award in effect and valid. (Appendix, p. 5A.) This motion was denied on January 12, 1990. (Appendix, p. 6A.) No federal issue was raised on the motion to dismiss.

On January 18, 1990, petitioner appealed the review division's denial of the motion to dismiss to the state appellate court. That court, after a hearing on motion of the court, affirmed the compensation review division's order of December 12, 1989 by order of March 28, 1990. (Petitioner's Appendix p. 40.)

³ Petitioner filed a motion to vacate the order of December 12, 1989, pending a decision on her motion to reargue. Motion to vacate was held in abeyance until motion to reargue was denied on January 2, 1990, then denied January 12, 1990. (Appendix, p. 4A.)

ARGUMENT — REASONS FOR DENYING THE WRIT

I. THE PETITIONER HAS RAISED NO FEDERAL QUESTION FOR REVIEW AND HER RELIANCE ON *FISK V. JEFFERSON POLICE JURY* IS MISPLACED AND INAPPROPRIATE.

As an initial matter, the petitioner has not specified what question she seeks to present to the Court, merely stating that it is the “same issue” as the one presented in *Fisk v. Jefferson Police Jury*, 116 U.S. 131 (1885). In that case, Fisk had performed legal services as district attorney for a Louisiana parish. When the parish refused to pay him for those services due to a Louisiana constitutional provision limiting the amount of taxes the parish could raise, Fisk sued, claiming that the Louisiana law was unconstitutional because it interfered with his implied contract with the parish to pay him for services rendered, and this Court agreed. *Id.*

In the present case, petitioner attempts to apply the holding of *Fisk* to the facts of her case, alleging that the workers’ compensation benefits she claimed were, in effect, consideration due to the decedent for past services rendered by him as a judge of the superior court, based on an implied contract between him and the state. This strained argument and attempted analogy is untenable.

Contrary to the petitioner’s claim, workers’ compensation benefits cannot be equated to “past due remuneration” payable under contract. They are granted neither by contract nor grace, but solely by legislative enactments. *See Conn. Gen. Stat. Chapter 568, §§ 31-275 et seq.* In order to qualify for workers’ compensation benefits, an individual must first establish that he is an “employee” as that term is defined in the Act. Without satisfying that threshold requirement, an individual simply has no entitlement to benefits under the Act.

The burden in a workers' compensation claim rests upon the claimant to prove that he is an "employee" under the act and thus is entitled to invoke the act. (Citations omitted.) This relationship is threshold because it is settled law that the "commissioner's jurisdiction is 'confined by the Act and limited by its provisions.' " (Citation omitted.)

Castro v. Viera, 207 Conn. 420, 426, 541 A.2d 1216 (1988).

The central question in the present case, the one decided by the Connecticut Supreme Court, was whether the decedent judge was an "employee" *as that term is defined in the Act*. The claim raised was and is strictly a matter of statutory definition, not a question of implied contract.

The Connecticut Supreme Court ruled that a superior court judge is a constitutional state officer, Conn. Const. art. 5, § 1, and not an employee, and therefore is not eligible for workers' compensation benefits. *Kinney*, 213 Conn. at 61. As the state supreme court has held in another case, "an act merely fixing salaries of officers creates no contract in their favor. . . ." *Pineman v. Oechslin*, 195 Conn. 405, 410, 488 A.2d 803 (1985) citing and quoting *Dodge v. Board of Education*, 302 U.S. 74, 78-79 (1937). This is solely a question of state law. It is axiomatic that, absent a contract, there can be no impairment of contract. Because this case presents only the question of the proper interpretation of a state statute, and not impairment of contract under the federal constitution, there is no federal question presented.

II. THE PETITIONER HAS NOT PROPERLY OR TIMELY RAISED THE ISSUE OF CONTRACT IMPAIRMENT PURSUANT TO THE U.S. CONSTITUTION, ART. I, § 10, AND THEREFORE THE COURT LACKS JURISDICTION.

Title 28 U.S.C. 1257(a) (1988)⁴ mandates that a federal question must have been "drawn in question" or "specially set up or claimed" below for the Supreme Court to have review jurisdiction. The Rules of the Supreme Court (effective January 1, 1990) require a petitioner to "show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment. . . ." Sup. Ct. R.14.1(h). The rule also requires reference to quotations from the record or specific references to where the federal issue appears *in the record*. Petitioner has failed to provide such references in her petition.

As previously stated, the federal claim was not made at trial nor on the reservation to the state supreme court. Respondent finds no such claim presented to the compensation review division as asserted in the instant petition (p. 11). Petitioner's seven-page motion for reargument to the state supreme court states only in a single line that the court's failure to find that workers' compensation benefits are due pursuant to an implied contract of employment "interferes with her contractual right as protected by both the state and federal constitutions." (Appendix, pp. 2A-3A.) (Motion denied without argument and without opinion January 2, 1990, Petitioner's Appendix p. 38.)

Petitioner has continually argued and briefed the issue of the existence of an implied contract, which argument both the state appellate and supreme courts have rejected. "Impairment of contract" is first mentioned, but not stated as an issue, in petitioner's brief filed March 19, 1990, in the

⁴ Petitioner asserts jurisdiction pursuant to the former Title 28 U.S.C. § 1257(3), the pertinent part of which is essentially the same.

appeal to the state appellate court. (Statement of issue, Appendix, p. 7A.) This was long *after* the decision in *Kinney v. State*, 213 Conn. 54, issued November 28, 1989, which is challenged in the instant petition, and long *after* the motion for reargument to the state supreme court had been denied on January 2, 1990. Briefs and oral arguments before state courts are not ordinarily part of the record and cannot be used to establish that a federal question was raised. *Live Oak Water Users' Association v. Railroad Commission*, 269 U.S. 354, 357-59 (1926). Respondent submits that the petitioner has not timely or properly raised the federal constitutional issue in her claim. Raising the federal question for the first time in a motion or petition for rehearing is generally insufficient unless the court actually entertains the petition and expressly decided the question. *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 128 (1945). The order denying the motion for rehearing must be more than a cursory statement that the motion has been considered and denied. *Consolidated Turnpike Co. v. Norfolk & Q.V.R. Co.*, 228 U.S. 326, 333-34 (1913). It must appear that the federal question was in fact passed upon in considering the motion for reargument. *Forbes v. State Council*, 216 U.S. 396 (1910).

Because the petitioner failed to timely or properly raise the issue of impairment of contract under the federal constitution, this Court should reject her petition for certiorari.

III. FOR THE PURPOSE OF SUPREME COURT REVIEW, THE STATE PROCEEDING WAS FINAL AT THE TIME THE STATE SUPREME COURT DENIED CLAIMANT'S MOTION TO REARGUE, JANUARY 2, 1990, AND THEREFORE THE PETITION FOR WRIT OF CERTIORARI DOCKETED AUGUST 7, 1990 IS NOT TIMELY.

The state supreme court's answer to the reserved question in *Kinney*, 213 Conn. 54, left nothing more of substance to be decided by the compensation review division other than

to reverse the trial commissioner's decision based on lack of jurisdiction, which it did on December 12, 1989. (Petitioner's Appendix p. 39.) Once the motion to reargue before the supreme court was denied on January 2, 1990 (Petitioner's Appendix p. 38), there was a "final judgment" sufficient for review, assuming *arguendo* there was a sufficient and timely claimed federal question. Where there is nothing more of substance to be decided in the trial court, a judgment is final within the meaning of 28 U.S.C. § 1257. *Local No. 438 Construction and General Laborers' Union v. Curry*, 371 U.S. 542 (1963). The judgment for this claim was final as of January 2, 1990 as it was then binding on the review division to reverse the trial commissioner's decision for lack of jurisdiction. *Mills v. State of Alabama*, 384 U.S. 216 (1966).

Title 28 § 2101(c) requires a petition for writ of certiorari to be filed within ninety days of a final judgment, which time would have expired April 2, 1990. This petition is not timely filed.

CONCLUSION

The State contends that review is neither necessary nor warranted by this Court to consider the issue presented by petitioner. For all the reasons set out above, the petition for writ of certiorari should be denied.

Respectfully Submitted,

STATE OF CONNECTICUT

CLARINE NARDI RIDDLE
ATTORNEY GENERAL

CHARLES OVEREND
CAROLYN QUERIJERO
BREWSTER BLACKALL
(Counsel of Record)
Assistant Attorneys General
P.O. Box 120
Hartford, CT 06101
Tel. (203) 566-3495

No. 90-280

**In The
Supreme Court Of The United States**

OCTOBER TERM, 1990

JOAN A. KINNEY,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

**APPENDIX TO BRIEF IN OPPOSITION TO THE
PETITION FOR A WRIT OF CERTIORARI
TO THE CONNECTICUT APPELLATE COURT**

CLARINE NARDI RIDDLE
ATTORNEY GENERAL

CHARLES OVEREND
CAROLYN QUERIJERO
BREWSTER BLACKALL

(Counsel of Record)

Assistant Attorneys General

P.O. Box 120

Hartford, CT 06101

Tel. (203) 566-3495

Attorneys for Respondent



APPENDIX TABLE OF CONTENTS

	Page
A. Claimant's counter statement of issue, appellee's brief, June 30, 1989, <i>Kinney v.</i> <i>State</i> , 213 Conn. 54	1A
B. Claimant's Motion for Reargument (excerpt), <i>Kinney</i> , 213 Conn. 54, December 8, 1989	2A
C. Claimant's Motion to Vacate, <i>Kinney v. State</i> , No. 786 CRD-3-88-11, Compensation Review Board [sic], December 14, 1989	4A
D. Claimant's Motion to Dismiss, <i>Kinney</i> , No. 786 CRD-3-88-11, January 5, 1990	5A
E. Order denying Motion to Dismiss of January 5, 1990, <i>Kinney</i> , No. 786 CRD-3-88-11, January 12, 1990	6A
F. Claimant's statement of issue, appellant's brief, filed March 19, 1990, <i>Kinney v. State</i> , No. A.C. 8817, Connecticut Appellate Court	7A



A.

**SUPREME COURT
OF THE
STATE OF CONNECTICUT**

NO. 13687

JUNE 30, 1989

**JOAN A. KINNEY,
Claimant**

V.

**STATE OF CONNECTICUT,
Respondent**

**BRIEF OF THE CLAIMANT-APPELLEE
JOAN A. KINNEY**

[p. ii]

COUNTER STATEMENT OF ISSUE

Was the Honorable Rhoda L. Loeb, Workers' Compensation Commissioner for the Third Congressional District, clearly erroneous when she found that for purposes of the Workers' Compensation Act, Honorable Frank J. Kinney, Jr. was working under a contract of employment?

**B. SUPREME COURT
STATE OF CONNECTICUT**

S.C. NO. 13687 : WORKER'S COMPENSATION
COMMISSION

JOAN A. KINNEY : COMPENSATION REVIEW
DIVISION

VS. : AT HAMDEN

STATE OF CONNECTICUT : DECEMBER 8, 1989

MOTION FOR REARGUMENT

Pursuant to Section 4122 of the Practice Book, JOAN A. KINNEY moves for reargument of the decision of the court published November 28, 1989 in the Connecticut Law Journal, 213 Conn. 54. The grounds for moving for reargument are as follows:

The court has failed in three respects to apply the proper standards of review in its determination that Joan A. Kinney's decedent was not, for purposes of worker's compensation, an employee.

. . . .

[p. 5]

. . . .

It is necessary to comprehend *Castro* [*v. Viera*, 207 Conn. 420 at] 433-434, [541 A.2d 1216] in order to understand the facts Commissioner Loeb found.

. . . .

[p. 6]

. . . .

Based upon this articulation of the law [*in Castro*], and based upon the findings of fact by Commissioner Loeb, this Court must find either that Hon. Frank J. Kinney worked

pursuant to an implied in fact contract and therefore must find that he was an employee for purposes of worker's compensation, and therefore, Joan A. Kinney is entitled to her contractual monetary benefits; or this court must find that although Hon. Frank J. Kinney was working pursuant to an implied in fact contract and was therefore an employee for purposes of worker's compensation, Joan A. Kinney, despite her contractual right, nevertheless is not entitled to her contractual monetary benefits merely because of policy decisions. To so find interferes with her contractual right as protected by both the state and federal constitutions.

.

THE PLAINTIFF, JOAN A. KINNEY

BY

ROGER J. FRECHETTE, JURIS #20847
HER ATTORNEY
FRECHETTE & FRECHETTE
12 TRUMBULL ST., NEW HAVEN, CT 06511
TEL. NO. 865-2133

C.

CASE CASE [sic] NO. 786 CRD-3-88-11

COMPENSATION
REVIEW BOARD [sic]

JOAN A. KINNEY, Widow
of FRANK J. KINNEY (Deceased)
CLAIMANTAPPELLEE

VS.

WORKERS'
COMPENSATION
COMMISSION

STATE OF CONNECTICUT
EMPLOYER
RESPONDENTAPPELLANT

DECEMBER 14, 1989

MOTION TO VACATE

The claimant moves the Compensation Review Division vacate its order of December 12, 1989, as the claimant timely filed a § 4122 Motion to Reargue. It is therefore premature to issue said order.

NO ARGUMENT THE CLAIMANT, JOAN A. KINNEY
NO EVIDENCE BY /s/ Roger J. Frechette

ROGER J. FRECHETTE, JURIS #20847
FRECHETTE & FRECHETTE, ESQS.
HER ATTORNEYS
12 TRUMBULL ST., NEW HAVEN, CT 06511
TEL. NO. 865-2133

ORDER

The above motion having been presented, the same is hereby DENIED 1/12/90

/s/ John Arcudi

John Arcudi, Chairman
Compensation Review Disvision [sic]
Workers' Compensation Commission

CERTIFICATION

12/14/89 To counsel of record.

/s/ Roger J. Frechette

ROGER J. FRECHETTE

D.

CASE NO. 786 CRD-3-88-11

**COMPENSATION
REVIEW BOARD [sic]**

**JOAN A. KINNEY, WIDOW
OF FRANK J. KINNEY (Deceased)
CLAIMANTAPPELLEE**

VS.

**WORKERS'
COMPENSATION
COMMISSION**

**STATE OF CONNECTICUT, EMPLOYER
RESPONDENTAPPELLANT**

JANUARY 5, 1990

MOTION TO DISMISS

Claimant, Joan A. Kinney, upon the denial by the Supreme Court for her Motion to Reargue in case styled Joan A. Kinney v. State of Connecticut 213 Conn. 54, said denial dated January 2, 1990, which denial makes final, for state court purposes, the action by the Supreme Court on the reservation by the Compensation Review Division on its motion pursuant to Sec. 31-324 C.G.S. Said Joan A. Kinney moves the Compensation Review Division dismiss the appeal of the State of Connecticut from the decision of Honorable Rhoda L. Loeb because of the failure of the State to comply with the twenty (20) day rule of Sec. 31-297(b) and pursuant to *Castro v. Vierra*, 207 Conn. 420, as more fully sets forth in the attached brief.

THE CLAIMANT, JOAN A. KINNEY

BY /s/ Roger J. Frechette

**ROGER J. FRECHETTE, JURIS #20847
HER ATTORNEY
FRECHETTE & FRECHETTE, ESQS.
12 TRUMBULL ST., NEW HAVEN, CT 06511
TEL. NO. 865-2133**

**ARGUMENT REQUESTED
EVIDENCE NOT REQUIRED**

E.

CASE NO. 786 CRD-3-88-11

: COMPENSATION
REVIEW DIVISION

JOAN A. KINNEY, Depen. Widow
of FRANK J. KINNEY (Deceased)
CLAIMANT-APPELLEE

: WORKERS'
COMPENSATION
COMMISSION

vs.

STATE OF CONNECTICUT
EMPLOYER
RESPONDENT-APPELLANT

: JANUARY 12, 1990

ORDER

Claimant's January 8, 1990 Request For Oral Argument
on the January 5, 1990 Motion to Dismiss is hereby denied.

Claimant's January 5, 1990 Motion to Dismiss is hereby
denied.

/s/ John Arcudi

John Arcudi, Chairman
Compensation Review Division
Workers' Compensation Commission

F.

**APPELLATE COURT
STATE OF CONNECTICUT**

NO. A.C. 8817

JANUARY TERM

**JOAN A. KINNEY,
Claimant**

VS.

**STATE OF CONNECTICUT,
Respondent**

**BRIEF OF THE CLAIMANT-APPELLANT
JOAN A. KINNEY
[Filed 3/19/90]**

[p. i]

STATEMENT OF ISSUE

Did the Compensation Review Division err when it failed to grant plaintiff's motion to dismiss defendant's appeal from Commissioner Loeb's award of benefits in favor of plaintiff when it is admitted the State of Connecticut failed to comply with the 20-day time constraints mandated by General Statutes § 31-297(b), when it is conceded that the State of Connecticut is an employer, and when Commissioner Loeb found plaintiff had entered into an employment relationship with the defendant, thereby distinguishing this case from *Castro v. Viera* 207 Conn. 420 (1988)?

Supreme Court U.S.
FILED

SEP 26 1990

JOSEPH F. SPANIOLO, JR.
CLERK

(2)
NO. 90-280

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1990

JOAN A. KINNEY, Petitioner

v.

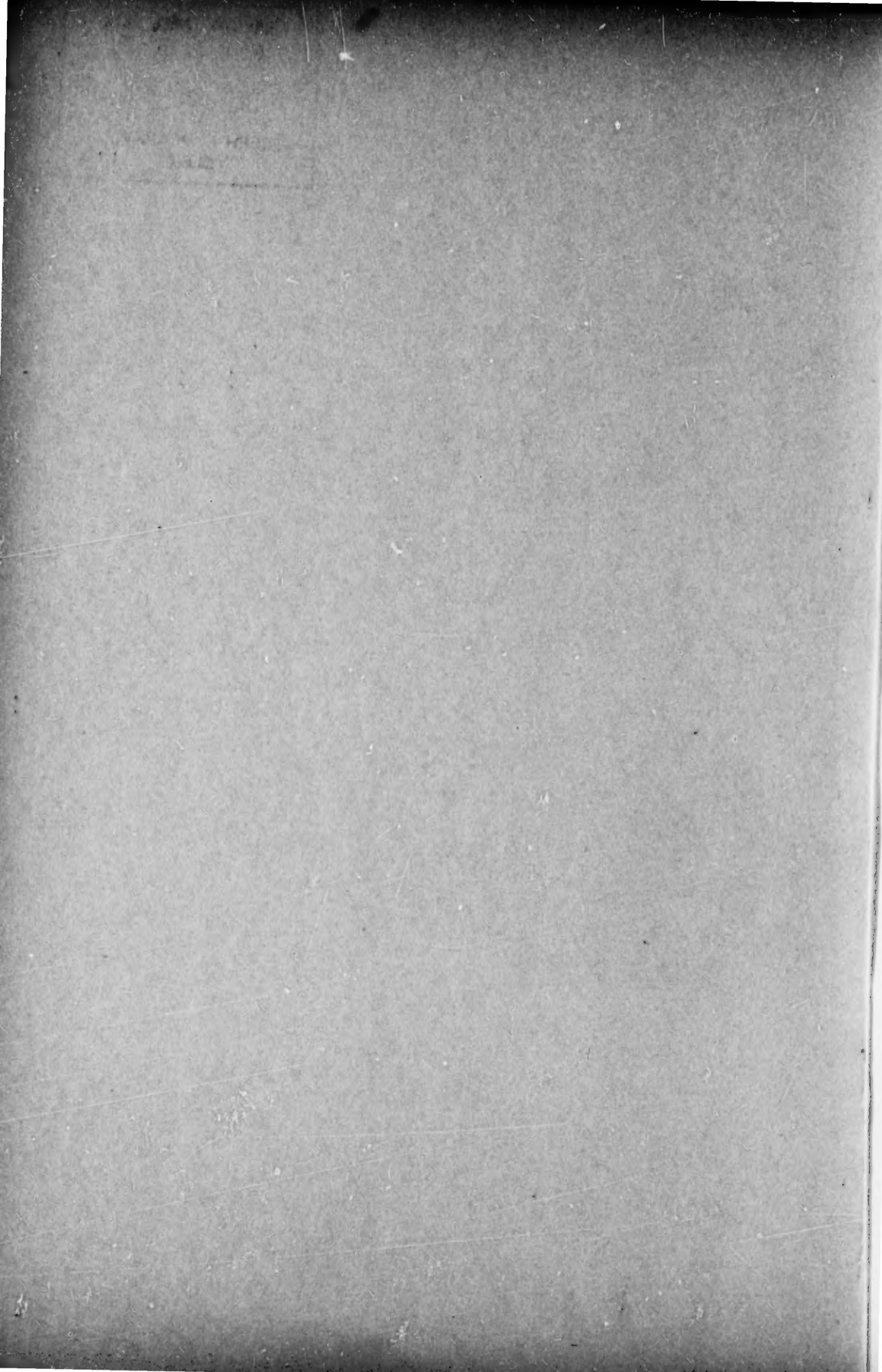
STATE OF CONNECTICUT, Respondent

REPLY BRIEF ADDRESSED TO ISSUES
RAISED IN BRIEF IN OPPOSITION
TO THE WRIT OF CERTIORARI
TO THE CONNECTICUT APPELLATE COURT

Roger J. Frechette
FRECHETTE & FRECHETTE
12 Trumbull Street
New Haven, CT 06511
Tel. No. (203) 865-2133

Attorney for
Petitioner

BEST AVAILABLE COPY



Questions Presented

1) Whether there is a Federal question of impairment of contract under the United States Constitution, art. 1, § 10 and Fiske v Jefferson Police Jury 116 US 131 (1885).

2) Whether the petitioner properly and timely raised the federal question of impairment of contract as aforesaid.

3) Whether the state proceedings became final on May 10, 1990.



TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
ARGUMENT - RESPONSE TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI	1
CONCLUSION	4



TABLE OF AUTHORITIES

Cases	Page(s)
Fiske v Jefferson Police Jury	
116 US131 (1885)	1,2,3
Constitutional Provision and Federal Statutes:	
U. S. Constitution, art. 1, §10 .	1,2,3
Miscellaneous:	
Connecticut Law Journal	2
C. G. S. 51-216a	3



ARGUMENT - RESPONSE TO RESPONDENT'S BRIEF
IN OPPOSITION TO THE PETITION FOR A WRIT
OF CERTIORARI

The three issues raised against the
Petitioner by the Respondent are illusory.

The Petitioner tried and won the case at
the trial level (Petitioner's Appendix,
(pp 1-25). The Respondent appealed to the
Compensation Review Division of the State
of Connecticut which, instead of deciding
the appeal, reserved to the Supreme Court
of the State of Connecticut the "Employee"
Issue. Naturally, because the trier of
fact below found the Petitioner was an
employee, the petitioner did not raise the
Fiske v Jefferson Police Jury 116 US 131
(1885) issue, the U.S. Constitution, art.
1 §10 Issue until the appeal process.

The first time the issue of the
petitioner not being an "employee" arose
was when the Reservation by the Supreme
Court of the State of Connecticut was



decided adversely to the petitioner (Petitioner's Appendix pp 25a - 38; on the Motion to Reargue that finding further was articulated by the Supreme Court of the State of Connecticut. That wrong was perpetuated by the Compensation Review Division (Petitioner's Appendix p 39), and then, on appeal, by the Appellate Court of the State of Connecticut (Petitioner's Appendix p40), and thence by the final judgment of the Supreme Court of the State of Connecticut that rejected petitioner's Fiske and U. S. Constitution Art. 1 §10 argument on May 10, 1990. That final judgment, that termination of the State proceedings, took place on May 10, 1990, reported in the Connecticut Law Journal, 215 Conn 807. (Petitioner's Appendix p 41). The Connecticut Law Journal is the official publication of the Judicial Department of the State of Connecticut,



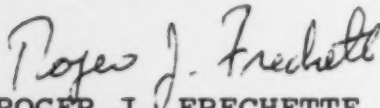
pursuant to Connecticut General Statutes 51-216a. That is the date that the State court judgment became final. As can be seen, the Petitioner's Petition for Writ of Certiorari to the Connecticut Appellate Court was timely taken, the issue of Fiske v Jefferson Police Jury 116 US 131 (1885) was raised at the first opportunity, as was the federal impairment of contract claim in violation of United States Constitution, art 1, §10, and, therefore, there is in law a federal question of impairment of contract under the United States Constitution, art. 1, §10.



CONCLUSION

The Petitioner contends that review is necessary and warranted, and that this issue of the federal impairment of Petitioner's contract rights under the United States Constitution must be restored to her.

Respectfully Submitted,



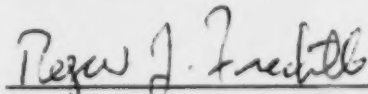
ROGER J. FRECHETTE
Admitted to the Supreme Court
10/12/71
12 Trumbull St.
New Haven, CT 06511
Tel. No. (203)865-2133



CERTIFICATION OF SERVICE

I, Roger J. Frechette, do hereby certify that three copies of the foregoing Reply Brief in Opposition to Respondent's Brief in Opposition to Petitioner's Petition for a Writ of Certiorari was duly deposited in the United States Mail, at the U. S. Post Office, New Haven, Connecticut, postage prepaid on September 26, 1990 addressed to:

Brewster Blackall, Esq.
Assistant Attorney General
P. O. Box 120
Hartford, CT 06101
Tel. No. (203) 566-3495



ROGER J. FRECHETTE
Attorney